Supreme Court, U.S.
FILED

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1995

CYNTHIA FAYE WOODS,
Petitioner

v.

WAL-MART, a Corporation, et al,
Respondents

On Petition For Writ of Certiorari To The
(United States Court of Appeals For the Tenth Circuit)

PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

In the City of Aurora, State of Colorado, a black woman was falsely accused, charged and prosecuted for conspiracy to commit theft, based on the deception perpetrated against her and four white women, while she was working as a cashier, by a thief known to police by several "aliases." The four white women though deceived as the black woman was, were not accused nor charged nor prosecuted as the black woman was. The black woman was pregnant when she was arrested at her job, she was hand-cuffed, she requested opportunity to use the rest room and her request was denied. She urinated on her body. The black woman was tried and she was found not guilty. At the trial of the black woman the District Attorney, Mr. John Franks admitted in a stipulation, that Respondent, Detective, Steven Anthony Neumeyer, lied when he claimed that the thief, Pamela Archuleta, implicated the black woman in a conspiracy to steal. The black woman is the Petitioner, Cynthia Faye Woods, who through this Petition seeks the power of justice traditionally found through this last effort to this eminent body of jurists and institution of last resort to those that may not otherwise be protected under our system of justice.

The Petition seeks to reverse a summary judgment that now appears to be a method of forcing individuals such as the Petitioner to bear the cost of appeals through the court system rather than trial on the merits, by Judges who admittedly do not believe in municipal liability under, Monell v. Department of Social Services, 436 U. S. 658 (1978).

The importance of this Petition lies in the review of the decisions of judges such as Judge Sparr of the United States District Court for the District Of Colorado, who declared in open court that he does not believe in the holding of Monell v. Department of Social Services, 436 U. S. 658 (1978), and then

granted summary judgment against the Petitioner, Cynthia Faye Woods and further, the implication of a City admitting that its agency, such as the City of Aurora Police Department in this case, wrongfully, illegally, maliciously and invidiously acted to damage a citizen and yet deny the citizen a voice, deny the citizen just compensation and use their friends in the Court system, Judges who stand against the decision in Monell to ensure that municipal liability is denied and that injustice be perpetrated.

QUESTION PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in affirming the grant of summary judgment by the District Court, against the Petitioner, Cynthia Faye Woods on her First and Third claims for Relief, based on: 42 U. S. C. § 1981; 42 U. S. C. § 1983 in favor of all the Respondents and 42 U. S. C. § 2000 (e), et seq. against Wal-Mart only, where, as in this case, the prosecuting attorney admitted that a police officer, Respondent, Steven Anthony Neumeyer had lied in order to present a factual basis for the charge and prosecution of the Petitioner, Cynthia Faye Woods and where the City of Aurora has admitted that lying by a Police officer for the purpose of establishing probable cause under the 4th Amendment proscription against unreasonable search and seizure made applicable to the States via the 14th Amendment due process clause, is within the policies, practices, and customs of the City of Aurora Police Department and where four other white women that made similar mistake, in failing to catch the deception of a thief was not accused of theft, nor charge with a crime nor prosecuted for any crime or conspiracy to commit a crime in the same transaction involving the same thief.

2. Whether the Court of Appeals erred in affirming the District Court's conclusion that police had probable cause to arrest the Petitioner, Cynthia Faye Woods, in a warrantless arrest where no fact supporting the arrest occurred in the presence of the police, especially, in light of subsequent admission that a police officer had to lie in order to establish probable cause to charge and prosecute the Petitioner, Cynthia Faye Woods.

3. Whether the police officers in this case had qualified

immunity defense under Colorado law.

4. Whether the District Court Judge Sparr's declaration that he does not accept the holding of the Supreme Court of the United States in Monell v. Department of Social Services, 436 U. S. 658 (1978) have any implication in the granting of summary judgment to the Respondents

PARTIES TO THE PROCEEDING

WAL-MART, a Corporation;
STEVEN ANTHONY NEUMEYER,
individually and as a member of the
AURORA POLICE DEPARTMENT;
SEAN THOMAS DEBOW,
individually and as member of the
AURORA POLICE DEPARTMENT;
CITY OF AURORA, a Municipal
Corporation in the State of Colorado;

Respondents

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STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under the provision of 28 U. S. C. § 1254 (1) for Petition of Certiorari to the United States Court of Appeal for the Tenth Circuit concerning the Order and Judgment entered in this case on February 16, 1996.

No rehearing nor extension of time for filing of the petition for certiorari was requested.

This Petition for certiorari, does not challenge the constitutionality of any statute of Congress and does not challenge the constitutionality of any State statute, therefore, the notification requirement of this Court's Rule 29.4(b) or (c) is not required to be made.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THIS CASE

4th Amendment to The United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized.

Section 1, 14th Amendment to the United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U. S. C. § 1981. Equal rights under the law

All persons within the jurisdiction of the United states shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens,

and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U. S. C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U. S. C. § 2000e-2(a). Unlawful employment practices

It shall be unlawful employment practices for an employer -
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

C. R. S. § 18-2-201(1). State of Colorado Criminal Conspiracy which was the basis of the charge brought against Petitioner:

A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.

BACKGROUND AND FACTS

The Complaint in this case was filed by the Petitioner, Cynthia Faye Woods (hereinafter "Petitioner") in the District Court, Arapahoe County, Englewood, State of Colorado, on April 27, 1992, prior to the trial of the criminal action for theft and conspiracy to commit theft, brought against the Petitioner at the District Court, Arapahoe County, Englewood, State of Colorado, which said criminal action is the background of the Civil Complaint filed by the Petitioner.

Pursuant to 28 U. S. C. §§ 1441 and 1446 and local Rule 103, the Defendants-Respondents removed the case to the United States District Court, for the District of Colorado. While the civil case was pending, the Petitioner successfully defended all the charges brought against her in the criminal action, namely: theft and conspiracy to commit theft.
Respondent, Sean DeBow, admits that the thief, Pamela Archuleta informed him prior to the arrest of and taking the Petitioner, Cynthia Faye Woods, into custody, that the Petitioner, Cynthia Faye Woods, was not involved in the theft of merchandise at Wal-Mart store. [see Appendix 10 & 13].
In the transcript of Scott Trebilcock, the key witness for the prosecution and Wal-Mart in the criminal case against the Petitioner, it was stated that the thief, Pamela Archuleta, "fooled" other agents of Wal-Mart who were white/Caucasian individuals.

On August 3, 1993, Petitioner filed a Motion to amend its complaint to add a claim for violation of 42 U. S. C. § 1981. By Court order dated September 28, 1993, the Petitioner's motion was granted. On October 5, 1993, Petitioner filed her Second Amended Complaint. On October 15, 1993, Petitioner filed her Motion for Partial Summary Judgment for Relief demanded under the First Claim for Relief, Racial Discrimination in violation of 42 U. S. C. § 1981 and supported

the motion with all the exhibits previously filed with the Court including the admission of Wal-Mart, that Petitioner was the only black person employed at its store on 14000 E. Exposition Avenue, Aurora, Colorado, on December 5, 1991, the date the theft was committed at Wal-Mart store by Pamela Archuleta.

In its motion to Dismiss Plaintiff's Motion for Partial Summary Judgment, filed on or about October 26, 1993, Wal-Mart relied on Patterson v. McLean Credit Union, 491 U. S. 164 (1989), for the proposition that 42 U. S. C. § 1981 "does not apply to conduct which occurs after the formation of a contract and which does not interfere with the right to enforce established contract obligations". On or about October 27, 1993, Wal-Mart withdraws its argument based on Patterson v. McLean Credit Union, supra, admitting that the decision of the district court in Great American Tool & Mfg. v. Adolph Coors Co., 780 F. Supp. 1354 (D. Colo. 1992) in holding that the Civil Rights Act of 1991, effectively overrules Patterson v. McLean Credit Union, supra. The Petitioner then submitted to the Court, the argument that since the Wal-Mart has conceded that the Petitioner is protected under 42 U. S. C. § 1981, and without any argument in opposition to the Petitioner's Motion, that she is entitled to the relief sought, ----- summary judgment as a matter of law. Petitioner's Motion for Summary Judgment was denied.

The Respondents filed their motions for summary judgment while the arguments concerning the Petitioner's motion for summary judgment were being filed. On or about July 30, 1993, Wal-Mart filed its motion for summary judgment, supporting its motion on its Answers to the Plaintiff's Interrogatories. Petitioner filed a response which included additional Exhibits. Exhibit A was another affidavit of the Petitioner, Cynthia Faye Woods, which among other things, contradicts Wal-Mart assertion that its representatives never physically touched the Petitioner. Exhibit B is the City of

Aurora Police Department Report which contradicts Wal-Mart assertion that it had no knowledge of the detention of the Petitioner nor was it ever involved in the charges brought against the Petitioner. Exhibit C is Wal-Mart's exit interview prepared by Jane Bullock and Eric Peoples before the arrival of Aurora police officer Sean DeBow, accusing the Petitioner of theft which Petitioner refused to sign. Exhibit C indicates that the Petitioner was doing a satisfactory job at the time she was being terminated of her employment with Wal-Mart.

On or about July 15, 1993, Respondents, S. A. Neumeyer, Sean DeBow and the City of Aurora, filed their motion for summary judgment. The Respondents filed depositions and the tape recording on December 5, 1991 of the transaction of Pamela Archuleta at the Wal-Mart store, located on 14000 E. Exposition Avenue, Aurora, Colorado as it relates to the Petitioner, Cynthia Faye Woods. This tape was reviewed at the criminal trial of the Petitioner, Cynthia Faye Woods, at the District Court, Arapahoe County, State of Colorado when the Judge trying the case declared that he believed the Petitioner, Cynthia Faye Woods and found her not guilty of theft and conspiracy to steal.

In her Objection to the Defendants' City of Aurora, S. A. Neumeyer and Shaw DeBow's motion for Summary Judgment, Petitioner submitted copy of the Transcript of the deposition of Pamela Archuleta to support the fact that she never conspired with the thief. The Petitioner also submitted as Exhibit B, copy of the Response of Defendant Sean DeBow to the Plaintiff's Combined Interrogatories and Request for Production of Documents and Things, wherein Interrogatory Response No. 3, (6c), Police Officer Sean DeBow admitted that he was informed by Pamela Archuleta, the thief, that she acted alone and did not conspire with the Petitioner. Exhibit C, being the Answer of the Respondents that the Police officers acted pursuant to the City of Aurora policies, practices, and customs

of the Aurora police department, was also submitted.

The hearing on Defendants-Respondents' motion for summary judgment held on April 1, 1994, was very instructive as to the approach adopted by the District Court. On page 4, lines 3-17, Reporter's Transcript, [Appendix 14], the Defendant-Respondent, Wal-Mart indicated that they are not asking for summary judgment on the issue of 42 U. S. C. § 1981 and stated "that at the very least there are disputed issues of fact on that question".

Defendants-Respondents, S. A. Neumeyer, Sean DeBow and the City of Aurora, claimed that the Petitioner, does not have a case under 42 U. S. C. §§ 1981 and 1983 because the police officer, Sean DeBow had probable cause to arrest the Petitioner and that probable cause would evaporate if the officer entertained serious doubt as to the truth of the allegations which form the basis of the arrest.(See Reporter's Transcript, pp. 6-7). Alternatively, the City of Aurora, and its police officers argued, they have qualified immunity defense which they claim protects them from their own mistakes.

On page 22, line 10-11, Reporter's Transcript, the Court stated that 42 U. S. C. § 1981 is equivalent to Title VII action and since the city is not an employer of the Petitioner, Cynthia Faye Woods, the action cannot lie.

When the Court was reminded that the brief of the Defendants-Respondents are replete with assumed facts of what happened after the arrest of the Petitioner and not the articulable facts upon which probable cause was based. The Court responded, "Well, that's why I went through the facts with Mr. Colin---(See page 24, lines 21-23, Reporter's Transcript). On page 44, lines 2-10, [Appendix 15] counsel for Petitioner stated to the Court that there is disputed issues of fact for which he is entitled to try the case before a jury since this is a case supposedly set to be tried to a jury. On page 44, lines 11-13, Reporter's Transcript, [Appendix 15] the Court

concluded that no one has a right to try a case to a jury when there is disputed issues of fact.

On page 50, Reporter's Transcript, [Appendix 16] the Court concluded that "Monell v. Department of Social Services, 436 U. S. 658 (1978) does not have anything to do with City liability except it says municipalities cannot be held liable" (See pages 51-55, Reporter's Transcript)[Appendix 16]. Further, on page 51, lines 5-23, Reporter's Transcript, [Appendix 16] the Court states that it disagrees with the holding in Monell v. Department of Social Services, supra.

Finally on page 71, line 25 and page 72, Reporter's Transcript, [Appendix 17, see also Appendix 6 & 7] the City of Aurora again admitted that at all times the two police officers sued in this case, were acting pursuant to the policies and rules of the City of Aurora. The Court granted summary judgment to the City of Aurora and its police officers and instructed Petitioner's counsel and Wal-Mart's counsel, that its decision on the Wal-Mart's motion for summary judgment would be based on the analysis of these three cases: St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993); Durham v. Xerox Corp., 18 F. 3d 836 (10th Cir. 1994); EEOC v. Flasher Co., Inc., 986 F. 2d 1312 (10th Cir. 1992). The analysis submitted to the Court is repeated below to show that at most the Defendants-Respondents have only established factual dispute, thus summary judgment against the Plaintiff will not lie. The District Court only consider the federal issues. Thus after dismissing the federal claim, the Court stated that it has no federal cause of action to support pendent jurisdiction of the state claims. Therefore this appeal deals with the dismissal through summary judgment of the federal claims.

SPECIFIC STATEMENTS OF THE FACTS

On or about December 5, 1991, "a shoplifter" in

Respondent. Wal-Mart's store, located at 14000 E. Exposition, Aurora, Colorado, escaped without paying for the television set that she stole. The "shoplifter's" name is reported by the Aurora Police as Pamela Archuleta. Police was able to determine at the scene, that Pamela Archuleta is known by many "aliases".

Plaintiff, Cynthia Faye Woods was employed as a cashier at the Wal-Mart store located at 14000 E. Exposition, Aurora, Colorado. The "shoplifter", Ms. Archuleta, lined-up behind other shoppers that were being served by the Petitioner. The Petitioner, was approaching the time for her to close her window for the day. The "shoplifter", Ms. Archuleta, had a television set in a cart with a pile of clothes on top of the television set. The "shoplifter", Ms. Archuleta, when it was her turn to be served by the Petitioner, set the clothes on the counter. The Petitioner, Cynthia Faye Woods, entered the respective prices of the clothing in the cash register, accepted money for them, and gave a receipt to Ms. Archuleta. The Petitioner was of the believe that the TV set was paid for as required at the "Electronic Department" and that the remaining items were for "even exchange" as claimed by the "shoplifter", Pamela Archuleta. The Petitioner, therefore, did not charge the allege "shoplifter" for the television set and other items of merchandise.

The Petitioner, Cynthia Faye Woods, knew that all the transactions will be checked by the three (3) white women at the exit door of the Wal-Mart Store located on 14000 E. Exposition, Aurora, Colorado, for appropriate receipts, therefore, believed the "shoplifter" in her statement that the items of merchandise were for "even exchange". The "shoplifter" Pamela Archuleta was able to go through the exit door, by tricks she perpetuated on the three (3) white women. The "shoplifter" Pamela Archuleta, was stopped at the store parking lot, by the store security personnel, Mr. Scott Trebilcock, having been able to escape the scrutiny of the three

(3) white women at the exit door. [Appendix 3 & 4] Affidavit of the Petitioner, Cynthia Faye Woods, executed on May 15, 1993, paragraph 8) [Appendix 8 Copy of the Transcript of the Testimony of Scott Trebilcock, who was the key witness for both the prosecution and Wal-Mart).

Archuleta was invited into the store for interrogation. The store managers attempted to invite the Petitioner Cynthia Faye Woods, for interrogation, but instead contacted Keisha Martin, who was waiting at the store, to give the Petitioner, Cynthia Faye Wood, a ride home. Keisha Martin is the Petitioner's sister-in-law and has observed as the "shoplifter" Pamela Archuleta was dragged into the store, by the store security personnel. [Appendix 11, Copy of the Transcript of the Testimony of Keisha Martin). During the arrest of Pamela Archuleta and the mistaken identification of Keisha Martin for the Petitioner, Cynthia Faye Woods, the Petitioner, was in the store employee room, preparing to leave for the day. When the store personnel, discovers that Keisha Martin was not the same person as the Petitioner, Cynthia Faye woods, he requested that Keisha Martin, who has identified herself as the Petitioner's sister-in-law, instruct the Petitioner, Cynthia Faye Wood to come to the store room where the store managers have gathered. When the Petitioner, Cynthia Faye Woods, appeared and ready to go home, the sister-in-law, Keisha Martin, informed her that she was being mis-identified by a store manager for the Petitioner and that it appears from a woman being dragged into the store, that a act of theft may have occurred. Further, Keisha Martin told the Petitioner, that she is wanted by the store managers at a room located somewhere at the rear of the store. The Petitioner, Cynthia Faye Woods, instead of going home went to answer her call.

When the Petitioner, Cynthia Faye Woods, came to the interrogation room, there were several managers and security personnel of the Respondent, Wal-Mart, gathered. One of the

Respondent, Wal-Mart employees asked the Petitioner, Cynthia Faye Woods, if she knew why she was being called. The Petitioner, Cynthia Faye Woods, replied: "I know what's going on, my sister-in-law Keisha told me" Subsequently, the Petitioner Cynthia Faye Woods, was asked if she knew the "shoplifter", Pamela Archuleta, and she responded that she did not know her. The "shoplifter", Pamela Archuleta was asked if she knew the Petitioner, Cynthia Faye Woods, and she responded that she does not know the Petitioner. The Respondent, Wal-Mart, personnel detained the Plaintiff, Cynthia Faye Woods, and continued to interrogate her. At all times, the Petitioner, Cynthia Faye Woods, continue to deny any complicity in the theft of items from Wal-Mart store. After a while, the Plaintiff, Cynthia Faye Woods, who was visibly pregnant, [Appendix 3, 4, 5] request a break to use the rest room. The Wal-Mart employees that were interrogating her refused to allow her to use the rest room. Under severe urge to urinate, the Petitioner, Cynthia Faye Woods, announced that she was going to use the rest room, and stood up to leave, but she was pushed down by the group of Wal-Mart employees and they announced: "You are not going anywhere, you are going to jail".

The Respondent, Wal-Mart employees, detained the Petitioner and called the City of Aurora Police. The Respondent, Police officer, Sean Thomas DeBow, arrived and was shown a tape. The tape does not in any way show or indicate complicity between the Petitioner, Cynthia Faye Woods and the "shoplifter", Pamela Archuleta. Petitioner, Cynthia Faye Woods, stated upon interrogation by the Police officers and the employees of Respondent, Wal-Mart, that she does not know the alleged "shoplifter", and does not have any relationship with her. [Appendix 9, Copy of the Transcript of the Deposition of Pamela Archuleta). (See Exhibit E, Response of Respondent Sean DeBow to Plaintiff's Combined

Interrogatories and Request for Production of Documents and Things Response to Interrogatory number 3, (6c)) [Appendix 10 & 13]. Plaintiff, Cynthia Faye Woods' plea of innocence and demand that she be released from her detention were ignored. The "shoplifter", Ms. Pamela Archuleta, also confirmed to the Police officers and the Respondent, Wal-Mart employees, who were interrogating her, that she does not know the Petitioner, Cynthia Faye Woods and that the Petitioner was not involved in her theft of any merchandise from the Respondent, Wal- Mart.

Petitioner, Cynthia Faye Woods, finally urinated on her body. (See Affidavit of Plaintiff, Cynthia Faye Woods executed August 3, 1993)[Appendix 3 & 4]. Petitioner, Cynthia Faye Woods, was placed in handcuffs against her will. Respondent, Wal-Mart's District Manager, Eric Peoples, advised the Aurora Police Officers on the scene, namely: Sean Thomas DeBow, and other members of the Respondent, City of Aurora, Police Department, that Wal-Mart intended to prosecute the Petitioner Cynthia Faye Woods. [Appendix 12, City of Aurora Police Department Report). By exit interview, conducted by Respondent, Wal-Mart, prior to the arrival of the Police Officers, Wal-Mart had already concluded that Petitioner, Cynthia Faye Woods, has committed the act of theft. (See Exhibit H, Wal-Mart exit interview, prepared by Jane Bullock and Eric Peoples). Plaintiff-Petitioner, Cynthia Faye Woods, was taken to jail. Plaintiff, Cynthia Faye Woods, was charged with conspiracy to steal and for theft of a thing of value worth more than $300.00, two counts of felonies, merely for failure to take notice of "a shoplifter's" act in the Respondent, Wal-Mart store located at 14000 E. Exposition, Aurora, Colorado.

The Petitioner, Cynthia Faye Woods, was prosecuted at the Arapahoe District Court, Englewood, Colorado, but was found not guilty of the offenses charged. The white woman at

the Electronic Department, at the Wal-Mart store, located at 14000 E. Exposition, Aurora, Colorado, who was deceived by the "shoplifter" to believe that the merchandise in her possession was for "even exchange" was not prosecuted for any crime nor was her employment terminated. [Appendix 3, 4, 8 and 10 above). The three (3) white women at the exit door, at the Wal-Mart store, located at 14000 E. Exposition, Aurora, Colorado, who were deceived by the "shoplifter"into allowing her leave the store without showing proper receipt, indicating payment for the merchandise in her possession, were not prosecuted for any crime nor were their employment terminated. Respondent, Wal-Mart, then terminated the employment of the Petitioner, Cynthia Faye Woods. Petitioner, Cynthia Faye Woods, was pregnant [See Appendix 3, 4, 5 & 18] at the time of the alleged incident and has since delivered a baby boy who is probably suffering the impact of the wrongful actions perpetrated against the Petitioner by the Defendants-Respondents.

Petitioner, Cynthia Faye Woods, has been forced to defend the action filed against her by the Defendants at the Arapahoe District Court, State of Colorado. Petitioner, Cynthia Faye Woods, demanded justice and requested that all charges against her be dropped as groundless, but her plea was denied. The Petitioner, Cynthia Faye Woods, defended the two criminal charges brought against her, for theft and conspiracy to commit theft, and was found not guilty of any of the charges.

Petitioner, Cynthia Faye Woods, is now diagnosed as suffering from post-traumatic stress disorder arising from the actions of the Respondents against her. (Affidavit of Dr. Cory Sapin, executed on May 10, 1993)[Appendix 5]. The Petitioner's work performance prior to this incident is considered "satisfactory". [Appendix 11].

Defendant-Respondent, Steven Anthony Neumeyer as City of Aurora Police officer was not present at Wal-Mart store

when Petitioner, Cynthia Faye Woods was arrested and taken into custody by Sean DeBow. The interview conducted by S. A. Neumeyer of the thief, Pamela Archuleta was done on a day or few days after the arrest of Petitioner, Cynthia Faye Wood. Petitioner, Cynthia Faye Wood was never brought before a neutral magistrate and was released after being left in a prison cage for some hours without questioning. Petitioner, Cynthia Faye Woods had no prior criminal records and this fact was known to the police as indicated in the City of Aurora Police Department Report.[Appendix 12]. On page 11 of the brief filed with the Court of Appeals for the ten Circuit, the Respondents City of Aurora and Detective Neumeyer, stated that probable cause, was determined a day after the incident of the arrest of the Petitioner, Cynthia Faye Woods, after Detective Neumeyer interviewed the thief, Pamela Archuleta and reported that Pamela Archuleta implicated the Petitioner, in a complicity to steal, which stated was determined by the District Attorney, John Franks to be a lie and so stipulated in trial. The City of Aurora and Detective Neumeyer further stated that Detective Neumeyer filed a standard criminal case filing against Petitioner, Cynthia Faye Woods, with the District Attorney's office, based on statements that Petitioner, Cynthia Faye Wood was implicated by Pamela Archuleta, a statement that was denied by Pamela Archuleta herself and later admitted by the District Attorney to be a lie on the part of Detective Steven Anthony Neumeyer.

FICTITIOUS FACTS

The United States District Court for the District of Colorado made the following state of fact on page 3, paragraph 1, of its Memorandum Opinion and Order dated January 30, 1995: The evidence adduced in this case demonstrates that (1)

Pamela Archuleta stole a color television set and eleven items of clothing from the Wal-Mart Store at 14000 E. Exposition, Aurora, Colorado on December 5, 1991; (3) the Petitioner was acquainted with Archuleta; (6) Archuleta, upon being detained by Wal-Mart's store detective and confronted with a video tape of her activities, admitted the theft and indicated that she and the Petitioner were related by marriage and that the Petitioner had assisted her in the theft; (7) Archuleta told Aurora Detective Neumeyer that she had agreement with the Petitioner to give her one-fourth of the cash refund money for her assistance in the theft. The statements that Petitioner was acquainted with Archuleta and assisted in the theft of merchandise are fictitious facts unsupported by competent evidence. If it were so the Plaintiff would not have prevail in the criminal trial. These are mere suppositions created by the Defendants and the United States District Court to exonerate the Respondents. The Order and Judgment entered by the United States Court of Appeals for the Ten Circuit is attached herein as [Appendix 1]. The summary judgment entered on April 1, 1994 is attached as [Appendix 2].

THE LEGAL STANDARD

The following cases or authorities have been cited for the proposition that summary judgment should be rendered if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), F. R. Civ. P.; Carter Baron Drilling v. Badger Oil Corp., 581 F. Supp. 592 (D. C. Colo. 1984); ANR Production Co. v. Westburne Drilling, Inc., 581 F. Supp. 542 (D. C. Colo. 1984); Celotex Corp. v. Catrett, 477 U. S. 317, 106 S. Ct. 2548

(1986); Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 106 S. Ct. 2505 (1986); Carey v. United Postal Service, 812 F. 2d 621 (10th Cir. 1987). Further, relief by way of summary judgment is drastic, and should be applied with caution to the end that litigants will have trial on bona fide factual disputes, and if there is any issue as to material fact dispositive of right or duty, case is not ripe for summary judgment. Jones v. Nelson, 484 F. 2d 1165 (C. A. Okl. 1973).

There is no dispute as to the legal standard for summary judgment, however, Petitioner, Cynthia Faye Woods, submits that the legal standard for summary judgement was incorrectly applied in her case.

REASONS FOR GRANTING THE WRIT

This case presents an important question of law about the extent to which procedural motion of summary judgement may be used to emasculate and deny an individual a constitutional right with out the opportunity of trial to the merits. The decision below, further conflicts with this Court's decisions and the settled law that summary judgment is appropriate when reasonable minds would not differ as to the out come of the case. If the decision below is allowed to stand, then Constitutional guarantees are meaningless because a judge may easily grant summary judgment in a contested case and in clear cases without the opportunity of trial on the merits. This situation is troublesome in a situation such as this case, where the trial judge cared to express his frustration with a Supreme Court of the United States decision that is still the supreme law of the land and granted summary judgment in spite of overwhelming evidence of discrimination and police misconduct against the Petitioner, Cynthia Faye Woods.
Granting the writ, would send a message that law enforcement

officials should not lie or falsify records in order to establish probable cause, after having caused severe damage to a citizen. The decision below seem to approve falsification of records and lying by police officers. If allowed to stand will become a novel principle in the history of mankind. Petitioner, Cynthia Faye Woods, therefore, presents to this honorable Court, some of the arguments presented as she seeks the Writ of Certiorari.

SUMMARY OF ARGUMENTS

1. Authority of police officers to make a felony arrest without a warrant is restricted to offenses committed in their presence.
2. The same standard of probable cause requirements apply to a white person as well as a black person.
3. Police officers have no authority to fabricate facts; summary judgment is not based on conjecture.
4. Petitioner is entitled to summary judgment on all her claims for relief or alternatively, genuine issue of material fact exist.
5. The issue of summary judgment was clouded by the existing bias of District Court Judge to the decision of the Supreme Court of the United States in Monell v. Department of Social Services, 436 U. S. 658 (1978), in so far as that decision affects municipal liability.

ARGUMENTS

Petitioner, Cynthia Faye Woods is entitled to summary judgment as a matter of law for the Defendants-Respondents violation of 42 U. S. C. §§ 1981 and 1983, which are her First and Third Claims for Relief or in the alternative a genuine issue of controverted fact has been established such that Defendants-Respondents are not entitled to summary judgment

as a matter of law.

It is undisputed that the outcome of the claim against the police officers depends on whether the police officers had probable cause to arrest the Petitioner, Cynthia Faye Woods. It is also undisputed that in this case police officer Sean DeBow made a warrantless arrest of the Petitioner, Cynthia Faye Woods for a crime constituting a felony committed not in the presence of the police officer. The action of police officer Sean DeBow in arresting the Petitioner without a warrant was illegal. The authority of police officers to make a felony arrest without a warrant is restricted to offenses committed in their presence. U. S. v. Clay, 495 F. 2d 700 (C. A. Ill. 1974) cert. den. 419 U. S. 937, 95 S. Ct. 207, 42 L. Ed. 2d 164. The Court stated in the Clay case that neither rumor, report or suspicion is adequate to support arrest. "Hunches" of criminality are not sufficient to support arrest. A hunch does not constitute "probable cause" U. S. v. Guana-Sanchez, 484 F. 2d 590 (C. A. Ill. 1973) cert. den. 420 U. S. 513, 95 S. Ct. 1344, 43 L. Ed. 2d 361. Further, probable cause for arrest could not be inferred from failure to protest arrest or to assert innocence to police officer. U. S. v. Dire, 332 U. S. 581, 68 S. Ct. 222, 92 L. Ed. 210. The Petitioner submit that the Respondent, police officers based their wrongful action against the Petitioner, Cynthia Faye Woods on their erroneous belief that subsequent consideration of their "perception of probable cause" will exonerate them. However, in this case, "probable cause" is based on the Respondents, police officers' conjecture upon conjecture.

The Petitioner, Cynthia Faye Woods was not just a mere bystander at the Wal-Mart store. She was an employee and it has been held that mere presence at the scene of a crime is not probable cause for warrantless arrest. U. S. v. Luschen, 614 F. 2d 1164 (C. A. Minn. 1980) cert. den. 446 U. S. 989, 100 S. Ct. 2161, 64 L. Ed. 2d 793. In U. S. v. Dansberry, 500 F. Supp. 140 (D. C. Ill. 1980), it was stated that neither mere presence

at the scene of crime nor mere suspicion of criminal conduct is sufficient to give probable cause to arrest. In U. S. v. Seay, 432 F. 2d 395 (C. A. Ala. 1970), cert. den. 401 U. S. 942, 91 S. Ct. 949, 28 L. Ed. 2d 223, it was held that the mere presence of defendant in co-defendant's automobile after co-defendant had passed counterfeit money, did not establish "probable cause" for arrest of defendant as one engaged in schemes or tricks to get money of another within vagrance ordinance. U. S. v. Seay, supra.

Further an arrest based solely on the Defendant's proximity to a residence where cocaine was being delivered and his participation in some ambiguous driving activity and observations directed toward the residence where the cocaine was being delivered was without "probable cause". U. S. v. Strictland, 490 F. 2d 378 (C. A. Cal 1974). It is axiomatic that mere suspicion, or good faith of arresting officer, are not enough to sustain showing of a probable cause. In summary, the subjective good faith of officer that he had probable cause to arrest is not sufficient to satisfy our constitutional requirements. U. S. v. Jennings, 468 F. 2d 111 (C. A. Ariz. 1972); U. S. v. Tramontana, 460 F. 2d 464 (C. A. N. Y. 1972).

Petitioner was denied the opportunity to have a neutral magistrate to review the evidence before her arrest. The police officers became the arresting officers, the neutral magistrates and the "law makers". The City of Aurora maintains that such actions fall within its custom. (See Copy of Answer to the Complaint filed with Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment)[Appendix 7 & 13]. Further, the Respondent, police officer, Sean DeBow, have submitted a novel principle of law, which permits him to substitute Mr. Scott Trebilcock, Wal-Mart employee, as a neutral magistrate.

In dealing with the problem suggested by the District Court, in page 41, line 2 -25, Reporter's Transcript, where the

Court alluded to the fact that officer Sean DeBow did not have any one to assist him with securing a warrant. The Petitioner, Cynthia Faye Woods, submit the Copy of City of Aurora Police Department Report [Appendix 12] to show that police officer Sean DeBow was not the only police officer at the scene of the crime. Detective Hughes was also at the scene. Further, since the crime was not committed in the presence of police, there is no harm in waiting until a neutral magistrate reviews the facts. Petitioner, Cynthia Faye Woods is a citizen of the United States and was not going to disappear.

It has been alleged that Respondent, Detective S. A. Neumeyer was involved in fabricating official records so as to create probable cause. Respondent, S. A. Neumeyer was not present at the scene of the alleged crime on December 5, 1991. (See Copy of deposition Transcript of the thief Pamela Archuleta as Exhibit attached as Appendix 9 & 13). (See also Copy of City of Aurora Police Department Report attached as Appendix 12). The report of S. A. Neumeyer was denied by Pamela Archuleta and is contrary to the report submitted by Sean DeBow, that prior to the arrest of Petitioner Cynthia Faye Woods, Pamela Archuleta told him that Cynthia Faye Woods was not involved in the theft of merchandise. Thus, for participating in an action designed to prosecute wrongfully, the Petitioner, Cynthia Faye Woods, Detective S. A. Neumeyer is clearly liable for all the claims for relief asserted by Petitioner. Detective S. A. Neumeyer's actions in fabricating records so as to establish probable cause a day or two after the arrest and release of the Petitioner, Cynthia Faye Woods, lead to a finding of a conspiracy to deny Petitioner, Cynthia Faye Woods her civil rights by the Aurora Police Department.

Petitioner, Cynthia Faye Woods, was detained in jail by police officer Sean DeBow, and later released within some hours without any further questioning and without bond. This is clearly an attempt to use arrest to investigate a criminal

allegation. An arrest will not be valid if it was merely used to afford agents or police time and opportunity to investigate and amass facts sufficient to constitute probable cause. U. S. v. Martinez, 456 F. 2d 79 (C. A. N. Y. 1972). What is the purpose of the arrest of Petitioner, Cynthia Faye Woods, if she wasn't brought before a judge or magistrate before her release? The arrest and detention of the Petitioner, Cynthia Faye Woods, was without probable cause. The police knew this when Petitioner was released without appearance before a magistrate. It is the duty of Courts to be watchful for constitutional rights of the citizens and against any stealthy encroachments thereon. Coolidge v. New Hampshire, 403 U. S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564; reh. den. 404 U. S. 874, 92 S. Ct. 26, 30 L. Ed. 2d 120.

The Respondents have not controverted the assertion of the Petitioner in her affidavit submitted with the Memorandum of Law in Support of the Plaintiff's Motion for Summary Judgment, that she was discriminated against because she is black. Respondent, Wal-Mart's representative, stated under cross examination during the criminal trial of the Petitioner that Pamela Archuleta, the thief, fooled other agents of Wal-Mart who are white persons. Yet, these white individuals did not face the same accusation faced the Petitioner, Cynthia Faye Woods. To accept the Defendant-Respondents conclusions about the Petitioner, Cynthia Faye Woods, is to erroneously determine that any Black person present at the scene of any crime is equally a criminal. Such an assertion flies in the face of human experience, thus must be rejected by all courts of justice.

The actions of the Defendants-Respondents were without probable cause because the crime for which the Petitioner was charged in the Arapahoe District Court, State of Colorado, requires specific intent. Colorado Revised Statute Section 18-2-201, Conspiracy, states in pertinent part as

follows: (1) A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he agrees with another person or persons etc.

The Defendants-Respondents have not and cannot show the requisite intent nor does their surveillance video tape show any intent to commit a crime. The State of Colorado recognizes that mere association with guilty persons does not amount to probable cause to arrest. People v. Henderson, 175 Colo. 400, 487 P. 2d 1108 (1971); People v. Weinhert, 174 Colo. 71, 482 P. 2d 103 (1971); People v. Nelson, 172 Colo. 456, 474 P. 2d 158 (1970). The Petitioner, Cynthia Faye Woods, even referred the Defendants-Respondents to: , Cook, Act, Intention, and Motive in Criminal Law, 26 Yale L. J. 645, 646-53 (1917) as source of an intellectual analysis of the issue of criminal culpability.

The majority opinion, in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U. S. 388 (1971), begins as follows: The Fourth Amendment provides that:"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. In Bell v. Hood, 327 U. S. 678 (1946), we reserved the question whether violation of that command by a federal agent acting under color of his authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct. Today we hold that it does." Monell v. Department of Social Services, 436 U. S. 658 (1978) states: Local government like every other 1983 "person," by the very terms of the statute may be sued for constitutional deprivation visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decision-making channels."

The City of Aurora has admitted that its police officers, Sean DeBow and S. A. Neumeyer, acted within its custom. Thus Police officer, Steven Anthony Neumeyer, by lying and

falsifying police records in order to support charges brought against the Petitioner, Cynthia Faye Woods, acted within the custom and/or official policy of the City of Aurora, State of Colorado. This is a novel principle that is unknown to mankind.

On the claim of immunity Petitioner, Cynthia Faye Woods, submits the case of Cooper v. Hollis, 42 Colo. App. 505, 600 P. 2d 109 (1979), which states that the type of decision-making involved when a police officer exercises discretion in performance of his duty does not give rise to immunity defense. In spite of this decision, Petitioner submit the case of Mucci v. Falcon School District No, 49, 655 P. 2d 422 (Colo. App. 1982), where the Colorado Court of Appeals, held that conduct under 42 U. S. C. § 1983 cannot be immunized.

The Respondent, Wal-Mart has for all purposes conceded to the claims of the Petitioner, Cynthia Faye Woods by their prior pleading. It supports its argument for summary judgment against the Petitioner's First Claim for Relief (Racial Discrimination in Violation of 42 U. S. C. § 1981) by citing authorities dealing with Title VII. Further it failed to explain how Title VII and Section 1981 merges and becomes the same statute. The Petitioner submits that the Respondent, Wal-Mart, had conceded summary judgment in favor of the Petitioner, on the issue of 42 U. S. C. § 1981. The Respondent, Wal-Mart withdrew its argument based on Patterson v. McLean Credit Union, 491 U. S. 164 (1989), in light of the decision in Great American Tool & Mfg. v. Adolf Coors Co., 780 F. Supp. 1354 (D. Colo. 1992). Further, Wal-Mart informed the Court that it is not seeking summary judgment on the claim pursuant to 42 U. S. C. § 1981. [Appendix 14], that at the minimum there is genuine issue of material fact. The law is that the prohibitions of 42 U. S. C. § 1981 encompasses both governmental and private actions. General Bldg. Contractors Assoc. v.

Pennslvania, 458 U. S. 375, 102 S. Ct. 3141, 73 L. Ed 2d 835 (1982).

Wal-Mart, presents the case of McDonnell Douglas Corp. v. Green, 411 U. S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), to show the burden of proof in title VII cases. Assuming that similar burden of proof is required in Title VII cases as in cases involving the rights guaranteed under 42 U. S. C. § 19981, the cases cited by Wal-Mart are factually distinguishable to the Case before this Court. The case of McDonnell Douglas Corp., supra involved a black civil rights activitist, a mechanic at McDonnell Douglas, named Green, who engaged in disruptive and illegal activity against his employer, as part of his protest that his discharge as an employee and the firms general hiring practices were racially motivated. Green, is clearly factually distinguishable to this case.

The decision in McDonnell Douglas Corp. v. Green, supra, establishes that if Title VII decisions applicable to 42 U. S. C. § 1981, then, under both theories of relief as applied to the facts in the case before the Court, summary judgment would be inappropriate against the Petitioner since she has established a prima facie case and has gone beyond that to establish through her own affidavit and the admissions of the Respondent, Wal-Mart that white individuals who failed to catch the deception of a thief as she did, were treated differently.

The Case of St. Mary's Honor Center v. Hicks, 509 U. S. _____, 113 S. Ct. 2742 (1993), deals with Title VII of the Civil Rights Act and reaffirms the decision of McDonnell Douglas v. Green, supra. The issue decided by the Court was: whether, in a suit against an employer alleging intentional racial discrimination in violation of § 703(a)(1) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-2(a)(1), the trier of fact's rejection of the employer's asserted reasons for its

actions mandates a finding for the Petitioner. The Court ruled that it does not, that the Plaintiff retains the ultimate burden of persuading the trier of fact in a trial, that she has been the victim of intentional discrimination. Thus, summary judgment may not be granted.

The Supreme Court in Hicks as in McDonnell, held that the Petitioner bears the burden of initially establishing by preponderance of the evidence, a prima facie case of racial discrimination. The Petitioner, Cynthia Faye Woods has done so. Thus summary judgment may not be granted.

In case of General Bldg. Contractors Ass'n v. Pennsylvania, 458 U. S. 375, 102 S. Ct. 3141, 73 L. Ed. 2d 835 (1982), the issue presented was whether injunctive relief can be imposed under 42 U. S. C. § 1981 on a corporation that hires its workers through a union hall that discriminates on the basis of race, under the theory of respondeat superior, where the union hall is an independent contractor, and without establishing that the union hall is in fact, an agent of the employer. The Supreme Court ruled that liability may not be imposed unless a finding of an agency relationship is established. Further the Court ruled that proof of intentional discrimination is necessary in order for the Petitioner to prevail in cases arising out 42 U. S. C. § 1981 and that private or governmental conduct can give rise to a 42 U. S. C. § 1981 case.

Durham v. Xerox Corp., 18 F. 3d 836 (10th Cir. 1994) was a case brought under 42 U. S. C. § 19981 for relief based on a claimed discrimination based on race. The court stated, "we would presume intentional discrimination if Durham (the Petitioner) had presented a prima facie case and Xerox had not rebutted that presumption by offering a legitimate nondiscriminatory reason for not promoting Durham (or treating the Petitioner differently). The Petitioner, Cynthia Faye Woods, has shown that any explanation provided herein as a

basis for its action, amounts to mere pretext by the failure of the Respondent, Wal-Mart to subject other white individuals to similar treatment for similar or identical mistakes.

The case of EEOC v. Flasher Co., Inc., 986 F. 2d 1312 (10th Cir. 1992) involves Edward Perez, an Hispanic, who struck a co-worker with his fist during a quarrel in which racial epithets were exchanged. The EEOC brought an employment discrimination action and alleged that Perez was fired because of national origin in violation of Title VII of the Civil Rights Act. The EEOC compared the incident involving Perez with five other instances where the company (Flasher Co., Inc.) handed out lesser punishment to non-minorities who had committed infractions of comparable or greater seriousness. The district court found that in three occasions involving non-minorities, the company (Flasher Co.) deciplined the employee involved less severely than Perez for incidents at least as seriously as the Perez's incident. Thus, the district court concluded that the EEOC has made out a prima facie case of disparate treatment under the first prong of the test established in McDonnell Douglas Corp. v.Green, supra.

The 10th Circuit held that the rule of McDonnell Douglas Corp. v. Green, applies in Title VII case, viz: the Petitioner must establish her prima facie case, followed by the Respondent setting forth a facially nondiscriminatory reason for its action, then the Petitioner assumes the normal burden of any Petitioner to prove his or her case at trial.

At best the cases cited by the Respondent Wal-Mart, indicate that the Petitioner, Cynthia Faye Woods bears the initial burden of establishing a prima facie case of intentional discrimination followed by the Respondent explaining its actions against the Petitioner in terms that are not facially prohibited by Title VII or 42 U. S. C. § 1981. The next step is to take the case to trial, not summary judgment against the Petitioner. EEOC v. Flasher Co., Inc., supra.

It is axiomatic that 42 U. S. C. § 1981 can be applied to private as well as public entities. The Respondent, Wal-Mart, had information concerning the fact that other white persons in its employment, failed to discover the tricks of the "shoplifter", Pamela Archuleta, prior to the deception perpetrated against the Petitioner, Cynthia Faye Woods. Wal-Marts failure to disclose this information to the Police officers and its knowledge of this fact on the face of the accusation, arrest, charge and prosecution of the Petitioner, is tantamount to knowing and wilful violation of the civil rights of the Petitioner, Cynthia Faye Woods. See Scott Trebilcock's testimony attached here as Appendix 8. Petitioner has established by affidavit, that three (3) white employees of the Respondent, Wal-Mart store located at 14000 E. Exposition, Aurora, Colorado, were delegated to stand at the exit door, on December 5, 1991, at the time that the "shoplifter", Ms. Pamela Archuleta, perpetrated the theft at the store, with the specific duty of checking for payment or non-payment for the merchandise in the possession of each customer. These white employees of the Respondent, Wal-Mart, were also deceived by Pamela Archuleta, in order for her to walk through the exit door, and leave the store, without being caught by the "exit receipt checkers". The Defendant, Wal-Mart, commanded, instigated and/or ratified the unlawful arrest of the Petitioner, Cynthia Faye Woods. The Police officers present at the Wal-Mart store located at 14000 E. Exposition, Aurora, inquired as to whether Wal-Mart wanted to charge the Petitioner, Cynthia Faye Woods of having conspired to steal its merchandise, and Wal-Manager, Eric Peoples indicated that Wal-Mart wanted to charge the Petitioner, with conspiracy to commit theft and theft.

The acts or omissions of the Defendant herein, constituted a deprivation of the Petitioner, Cynthia Faye Woods, Constitutional rights, privileges and immunities.

Thus based on the analysis provided under Title VII cases, and the case decision under section 1981, the Petitioner will prevail or at least withstand summary judgment. The mere fact that 42 U. S. C. § 1981 does not provide independent damages remedy is not a ground to dismiss the claim, since the Supreme Court has ruled that the express cause of action for damages created under § 1983 constitutes the exclusive federal damages remedy for violation of the rights guaranteed in § 1981. Jett v. Dallas Independent School Dist., 491 U. S. 701, 733, 109 S. Ct. 2702, 2721, 105 L. Ed. 2d 598, 625 (1989); U. S. v. Calderon, 782 F. Supp. 601 (M. D. Fla. 1992).

Petitioner is entitled to summary judgment as a matter of law for the Respondents' intentional violation of 42 U. S. C. § 1983, which is her Third Claim for Relief, or in the alternative a genuine issue of controverted fact has been established such that the Defendants-Respondents are not entitled to summary judgment as a matter of law.

In Dennis v. Sparks, 449 U. S. 24, 101 S. Ct. 183, (1980), the Supreme Court held that private entities can act under "color of law", when it wilfully participates in joint activity with the government or its agents. This is the case herein. As established under the Exhibits provided above, it was the Respondent, Wal-Mart through its agents such as Eric Peoples and Scott Trebilcock that urged the prosecution of the Petitioner, Cynthia Faye Woods. The Petitioner, Cynthia Faye Wood has been arrested and denied the right to freedom of movement prior to the arrival of the police. As stated in Lee v. Town of Estes Park, Colo., 820 F. 2d 1112 (10th Cir. 1987), the Petitioner has shown that Wal-Mart was not an idle, innocent by-stander in the deprivation of the Petitioner, Cynthia Faye Woods civil rights.

The Respondent's violation of the civil rights of the

Petitioner, Cynthia Faye Woods, extended to the continued prosecution of the Petitioner, when evidence clearly existed that other white individuals made similar mistakes as did the Petitioner, Cynthia Faye Woods, in failing to discover the deception of the "shoplifter", Pamela Archuleta, yet were not accused, arrested, charged and prosecuted for the same crimes as the Petitioner, Cynthia Faye Woods.

The Respondent, Wal-Mart, had information concerning the fact that other white persons in its employment, failed to discover the tricks of the "shoplifter", Pamela Archuleta, prior to the deception perpetrated against the Petitioner, Cynthia Faye Woods. Wal-Marts failure to disclose this information to the Police officers and its knowledge of this fact on the face of the accusation, arrest, charge and prosecution of the Petitioner, is tantamount to knowing and wilful violation of the civil rights of the Petitioner, Cynthia Faye Woods.

Petitioner's right to Equal Protection under the law, was denied, where as in this case, the Respondent, Wal-Mart failure to disclosed that other employees were equally deceived as the Petitioner was, it tacitly became a part of the prosecuting and arresting decision. Petitioner was the only black person employed by the Respondent, at the time of this incident. Petitioner, Cynthia Faye Woods, was the only person accused, arrested, charged and prosecuted for theft, though other white persons employed by the Respondent, Wal-Mart, made the same or similar mistake as the Petitioner made, in failing to catch the deception of the "shoplifter", Pamela Archuleta and thus allowing Pamela Archuleta leave the store without paying for some items of merchandise. The accusation, arrest, and continued prosecution of the Petitioner, Cynthia Faye Woods, was based on her race, the fact that Petitioner is a black person.

The Respondent, Wal-Mart, maliciously had Petitioner arrested, illegally and without probable cause in violation of the Fourth Amendment to the Constitution of the United States,

since under the state of facts available to Respondent, Wal-Mart, a person of ordinary prudence and caution would not entertain an honest and strong suspicion, that the person arrested is guilty. Clement v. Major, 8 Colo. App. 86, 44 P. 776 (1896). The Respondent, Wal-Mart, commanded, instigated and/or ratified the unlawful arrest of the Petitioner, Cynthia Faye Woods. The Police officers present at the Wal-Mart store located at 14000 E. Exposition, Aurora, inquired as to whether Wal-Mart wanted to charge the Petitioner, Cynthia Faye Woods of having conspired to steal its merchandise, and Wal-Manager, Eric Peoples indicated that Wal-Mart wanted to charge the Petitioner, with conspiracy to commit theft and theft. It is settled Law in the State of Colorado, that one who instigates, commands and/or ratify an unlawful arrest is liable therefor. Pomeranz v. Class, 82 Colo. 173, 257 P. 1086 (1927). This is substantive law and under Erie Doctrine should apply in Federal Courts. Marcus v. Carraquillo, 782 F. Supp. 593, at 600-601 (M. D. Fla. 1992). The Petitioner, Cynthia Faye Woods, was denied the opportunity to leave a confined area by Wal-Mart employees, and was pushed down to her seat by Wal-Mart employees - all white persons, when she requested to use the rest room to urinate and was told that she was going no where, that she was going to jail. All these happened before the Police arrived.

The acts or omissions of the Respondent herein, constituted a deprivation of the Petitioner, Cynthia Faye Woods, Constitutional rights, privileges and immunities, in violation of § 1983.

Petitioner is entitled to summary judgment as a matter of law for the Respondent, Wal-Mart's Violation of 42 U. S. C. § 2000(e), et. seq., which is her Eleventh Claim for Relief, or in the alternative a genuine issue of controverted fact has been established such that Respondent, Wal-Mart is not entitled to

summary judgment as a matter of law.

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Wal-Mart terminated the employment of the Petitioner, prior to the arrival of the Police officer, Sean DeBow, when it provided the Petitioner, a Notice of Separation claiming that the Petitioner has stolen from it.

As stated in the case of in the case of EEOC v. Flasher Co., Inc. supra, disparate treatment in which a person of one race is treated differently as those of another race, is clear evidence of discrimination. Petitioner is entitled to summary judgment as a matter of law or alternatively a genuine issue of material fact exists, such that Respondents are not entitled to summary judgment as a matter of law on all federally guaranteed rights.

Respectfully submitted,

Patrick Anene Egbune
State of Colorado #20397
2323 South Troy Street, Suite 5-210
Aurora, Colorado 80014
(303) 695-0889

APPENDIX-1

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CYNTHIA FAYE WOODS,	)	
	)	
Plaintiff/Counter-Defendant/Appellant,	)	
	)	No. 95-1097
v.	)	(D.C. No.
	)	92-S.965)
S.A. NEUMEYER; SEAN DEBOW named as: Shawn DeBow; individually and as members of the Police Department; AURORA, CITY OF, a municipal corporation in the State of Colorado, joint and several liability,	)	(D. Colorado)
	)	
Defendants-Appellees,	)	
	)	
v.	)	
	)	
WAL-MART, a Corporation,	)	
	)	
Counterclaim-Defendant/ Appellee.	)	

ORDER AND JUDGMENT*
entered February 16, 1996

Before **PORFILIO, HENRY,** and **BRISCOE**, Circuit Judges.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Title 42 U.S.C. § 1981 provides, in part, "[a]ll persons . . . shall have the same right . . . to the full and equal benefit of all laws . . . as is enjoyed by white citizens." Under 42 U.S.C. § 1983, an aggrieved person may sue "every person" who, acting under color of state law, abridges rights, immunities, or privileges created by the Constitution or laws of the United States. Ms. Cynthia Faye Woods invoked both statutes as well as state causes of action to characterize and proscribe the conduct of her employer, Wal-Mart; police officers in the Aurora Police Department, Steven A. Neumeyer and Sean T. Debow; and the Aurora Police Department, City of Aurora, Colorado. Her grievances, however, are not cognizable within these statutory bounds and were properly dismissed by summary judgment. We therefore affirm.

Because the parties are amply familiar with the facts of this case, we sketch them briefly only to illustrate the legal conclusions they precipitate. On December 5, 1991, just before closing out her register at a Wal-Mart store in Aurora, Ms. Woods, a cashier in her second month of employment at the

store, was filmed by an internal security camera permitting a customer to pass through her check-out stand, paying only for a pair of tweezers and an item of children's clothing, although the shopping cart contained a color television and eleven articles of clothing. A Wal-Mart security officer observed the encounter, followed the customer, Ms. Pamela Archuleta, outside the store and escorted her to a non-public room where she confessed to taking the merchandise. Ms. Woods was also summoned. Upon spotting Ms. Archuleta, store personnel heard Ms. Woods exclaim, "I know what's goin' on, that's my sister-in-law, and I know what's goin' on." Ms. Archuleta told store personnel she was related to Ms. Woods by marriage. A check of store personnel records revealed Ms. Woods' married name is Martin, which is the same name Ms. Archuleta gave Wal-Mart as her maiden name. Aurora police, summoned to the store, spoke to the security officer, viewed the videotape, and proceeded to arrest Ms. Woods, charging her with felony theft and conspiracy to commit theft.[1] Although taken to the Aurora jail, Ms. Woods was soon released and later, after a trial, found not guilty of the charged offenses in a state court proceeding. That verdict spawned this lawsuit.

According to Ms. Woods, an African American, the shoplifter duped other white Wal-Mart employees, none of whom was implicated in the theft by the Aurora police or terminated by Wal-Mart. Consequently, she alleged under § 1981 she was denied the equal protection of the law "enjoyed by white citizens." Ms. Woods further alleged Officers Neumeyer and Debow, and Wal-Mart acting under the authority of state law, violated her fourth amendment right to

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[1]Archuleta was a co-defendant in the state criminal proceeding where she was also charged with possession of drug paraphernalia.

be free from an unreasonable seizure when they detained and arrested her, supported only by misinformation and hearsay. This state action by the police, she asserted, represented an official municipal policy of the Aurora Police Department designed to deprive Ms. Woods of her rights.

Central to the resolution of each of Ms. Woods' claims is the question whether there was probable cause to arrest. Indeed, the fourth and fourteenth amendments are violated when a state officer arrests a person without probable cause. Although we review anew the district court's legal determination Officer Debow had probable cause, the facts underpinning that conclusion are subject to the clearly erroneous standard of Fed. R. Civ. P. 56(c). *Randle v. City of Aurora*, 69 F.3D 441, 446, n.7 (10th Cir. 1995). Even were we to prefer another permissible reading of the evidence, the trial court's choice between the two cannot be judged clearly erroneous. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985).

To undermine its finding there was probable cause to arrest based on statements made to the arresting officer and a review of the videotape, Ms. Woods offers half of a legal principle. While it is true that a warrantless arrest may be restricted under certain circumstances to those crimes committed in the presence of the police, as Ms. Woods urges, the police may also arrest a person without a warrant when there are reasonable grounds to believe the person to be arrested has committed or is committing a crime. *United States V. Clay*, 495 F.2d 700, 704 (7th Cir.), a *cert. denied*, 419 U.S. 937 (1974). In this case, Officer Debow watched the videotape of Ms. Woods' bagging items of clothing and folding what later was discovered to be a Target store receipt over the top of the Wal-Mart sack. Ms. Woods rang up for sale only two small items. Together with Ms. Archuleta's confession and Wal-Mart personnel's observations and statements about the relationship

between the cashier and customer, a reasonable officer could conclude there was probable cause to believe Ms. Woods committed a crime.

Probable cause presents a lower threshold than actual guilt. It "does not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands, and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt." *Gerstein v. Pugh*, 420 U.S. 103, 121 (1975). Moreover, an "[a]cquittal does not establish the lack of probable cause." *Scruggs v. United States*, 929 F.2d 305, 307 (7th Cir. 1991).

These legal touchstones support two conclusions that undermine Ms. Woods' § 1981 claim. First, we cannot say the district court's determination that Officer Debow had probable cause to arrest Ms. Woods was error. No subsequent acquittal alters this finding at the outset. Moreover, when we purge this conclusion of the insinuations of racial animus Ms. Woods injects,[2] her contention that all actions flowing from that initial arrest are unlawful must also fail.

Second, the essential element of a § 1981 claim, intentional discrimination based on race, is missing. *Fitzgerald v. Mountain States Tel. & Tel. Co.*, 68 F.3d 1257, 1262 (10th Cir. 1995). Although Ms. Woods presents no direct evidence of intentional discrimination, we may apply the *McDonnell Douglas* proof scheme to decide whether Ms. Woods established discriminatory intent by circumstantial evidence. *Reynolds v. School Dist. No. 1, Denver, Colo.*, 69 F.3d 1523, 1533 (10th Cir. 1995) (citation omitted). Again, having read

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[2] In her summary of the arguments, Ms. Woods contends, "The same standard of probable cause requirements apply to a white person as well as a black person."

the record, we are at a loss to find defendants intended to discriminate against Ms. Woods.

Indeed, the record reveals no facts, other than Ms. Woods' allegations, that similarly situated white employees who interacted briefly with Ms. Archuleta, but were not arrested or prosecuted, were accorded their full rights, thus establishing a § 1981 violation. The videotape captures only Ms. Woods' underringing the sale. The record contains no evidence of racial slurs or other conduct indicating Officer Debow and Wal-Mart acted with the intent to discriminate against Ms. Woods. Instead, the record presents a rather straight-forward picture of an incident of shoplifting to which the employer and police responded.

This void similarly disables Ms. Woods' claims under Title VII that Wal-Mart discriminated in terminating her employment. Id. At 1533; *Durham v. Xerox*, 18 F.3d 836 (10th Cir.), *cert. denied*, 115 S. Ct. 80 (1994). Against Wal-Mart's proffered nondiscriminatory reason for terminating Ms. Woods, theft, (Appendix 6), Ms. Woods has alleged only that other white employees who were deceived by Ms. Archuleta were not also terminated. Nevertheless, these allegations fall short, disparate treatment being in-sufficient to satisfy proof of intentional discrimination. Consequently, Ms. Woods has failed to meet her burden of showing Wal-Mart's explanation is pretextual. The district court properly granted summary judgment.

Ultimately, these conclusions, the existence of probable cause and the lack of proof of intentional discrimination, snare each of Ms. Woods' claims of error. While they do not specifically address the City of Aurora's liability for maintaining an official policy of discrimination, they certainly lead the way to our analysis of that issue. In her third amended complaint, Ms. Woods alleged:

The actions of the Police officers, the Aurora Police

> Department and the City of Aurora, in this case, were based on official policies, customs, usages, practices of not properly investigating and at the same time not securing the decision of a neutral magistrate as was the case herein in the case of Plaintiff, Cynthia Faye Woods. This custom, practices [sic] and/or policies, etc. is [sic] exemplified by the facts of this case, in that proper investigation was not conducted and a **neutral magistrate** was not sought, in an attempt to exonerate the Plaintiff of the accusation of having committed the crime of theft and being involved in a conspiracy to commit theft as is required **by law**, in **any felony** such as **the felonies** the Plaintiff is accused of.

(Emphasis in original.)

Merely stating that "this custom . . . is exemplified by the facts of this case" does not prove the existence of an unconstitutional municipal policy, however. *City of St. Louis v. Praprotnik*, 485 U.S. 112,128 (1988). Nor has Ms. Woods alleged similar discriminatory treatment of others amounting to a practice or policy that is widespread, *Melton v. City of Oklahoma City*, 879 F.2d 706, 725 n.26 (10th Cir. 1989), cert. denied, 502 U.S. 906 (1991), or long-standing. *Jett Dallas Indep. Sch. Dist.*, 491 U.S. 701, 736 (1989). In oral argument, the City of Aurora, responding to a question by the panel, stated it had no specific policy whether to issue a summons and complaint or arrest the individual suspected of shoplifting or theft but relied on the officer's probable cause determination. In that vacuum, Ms. Woods does not allege how the officer's action reflects any official sanction. *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). Clearly, Ms. Woods' theory is premised on *respondeat superior*, which has been long rejected by the Court. *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 694 (1978).

We therefore **AFFIRM** the district court's judgment

granting summary judgment on behalf of Officers Debow and Neumeyer and the City of Aurora Police Department on Plaintiff's sections 1981 and 1983 claims. For Wal-Mart, we **AFFIRM** its nonliability under sections 1981, 1983 and 42 U.S.C. § 2000(e) et seq.

Entered for the Court
John C. Porfilio
Circuit Judge

APPENDIX-2

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Case No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

V.

WAL-MART, a corporation; STEVEN ANTHONY NEUMEYER, individually and as a member of the AURORA POLICE DEPARTMENT; SEAN THOMAS DEBOW, individually and as a member of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the state of Colorado; joint and several liability,

Defendants.

REPORTER'S TRANSCRIPT OF SUMMARY JUDGEMENT MOTIONS HEARING APRIL 1, 1994

Before the HONORABLE DANIEL B. SPARR, U.S. District Court Judge, in Courtroom C-501, United States Courthouse, Denver, Colorado, commencing on April 1, 1994,

at 2:36 p.m.

ORIGINAL

LESLIE MEGILL - Official Reporter - (303) 573-8141
1929 Stout Street - Drawer 3562 - Denver, Colorado 80294
PROCEEDINGS RECORDED BY MECHANICAL
STENOGRAPHY TRANSCRIPT PRODUCED BY
COMPUTER

THE COURT: All right. The facts as to these claims are clear and I don't think particularly in dispute. The claims make several claims here. The claims arise out of an incident that apparently occurred on December 5th, 1991. At that time, a person, allegedly a shoplifter, later identified as one Pamela Archuleta, was allegedly permitted by Ms. Woods, the plaintiff here, to leave a Wal-Mart store, where Ms. Woods was employed as a cashier, without having paid for certain purchases; namely, a television set and some clothing.

The police officers were apparently called by a store detective to investigate the incident, and the store detective had already investigated the incident. The matters were apparently filmed by the store video camera, and the videotape was preserved.

The store detective and other store employees were interviewed by the police officer, Officer DeBow, and he was told that the folks had observed, on a camera, a woman later identified as Ms. Archuleta go to the checkout stand staffed by Ms. Woods, who was a store employee; that she had a color television in her shopping cart under a pile of clothing; that Ms. Woods was observed leaving the television in the basket, not ringing it up on the register. She also did not ring up 11 items of clothing but was observed ringing up a pair of tweezers and

one child's outfit and then bagging all the merchandise for Ms. Archuleta.

They were also then informed by store employees that two of the items were paid for, those two that had been rung up on the cash register, and that Ms. Archuleta exited the store with the television and all items that were paid for and the items that were not paid for.

Outside the store, she was detained by a store detective and returned to the office along with the merchandise -- the total value of the merchandise was allegedly $582.13 -- and the videotape that recorded the entire transaction, save apparently the detention of Ms. Archuleta outside the store.

The officer was also told that, under advisement, Archuleta admitted that she had stolen the merchandise but stated she did not know Ms. Woods and that Ms. Woods was not involved earlier. Apparently Ms. Archuleta had, according to information that the officer had in hand, told a store employee that Ms. Woods was Ms. Archuleta's sister-in-law.

Apparently Archuleta --apparently Ms. Woods -- there was information to believe that Ms. Woods' married name was Cynthia Martin, which had been apparently checked out by records. Prior to the arrest, officer DeBow confirmed that. Ms. Archuleta was also initially told that -- also, it was alleged that Ms. Archuleta initially told the employees that the plaintiff had assisted her in committing the theft.

The officer observed the videotape and also had a statement by one Harvey Simmons, who was a store employee, who had apparently allegedly observed Ms. Woods in the vicinity of the room where the interrogation was being -- was taking place and had heard her -- overheard her say, I know what's going on. That's my sister-in-law, and I know what's going on. The statement was furnished to the officer at the time he made his investigation.

The officer was clearly entitled to consider all this

information within his knowledge in making a probable cause determination, including any information relayed to him by citizens, eyewitnesses, or other people having knowledge of the alleged criminal activity.

The officer prepared a report which summarized the information that I had just relayed, called a -- and was also given what was known as a loss prevention apprehension report, which is Exhibit H, prepared by Wal-Mart store employees. Exhibit G, I believe, is the statement in support of the arrest prepared by Officer DeBow as a result of the information that he had within his knowledge at the time that he elected to make the arrest. He did in fact make a warrantless arrest of Ms. Woods based on this information.

Subsequent to that time, apparently Detective Neumeyer of the Aurora Police Department, who had no contact whatsoever with the plaintiff -- and that's conceded -- made a further investigation based upon his further investigation and an interview of Ms. Archuleta, which Detective Neumeyer reported in Exhibit K, criminal case filing with the Arapahoe County Attorney's Office.

It was determined that the plaintiff should be filed on for two counts, 18-4-401, theft over $300, and -- that's C.R.S. 18-4-401 -- C.R.S. 18-2-201, conspiracy. The police report was Exhibit K, as I indicated.

That report indicated that upon questioning, Pamela Archuleta had confessed to the theft of clothing for the purpose of later returning the items to Wal-Mart for a refund for cash and using the cash to purchase cocaine which she was going to use in her cocaine pipe. That was also apparently found on her person. She advised them a majority of the money was going to be maintained by her. She'd made an agreement with Cynthia Woods to give her apparently one-fourth of the cash refund money for her assistance, Ms. Woods being an employee of the Wal-Mart store.

Defendant further advised it was her idea to commit the theft and she had convinced Cynthia Woods to assist her in the commission of the theft. This was the report which was prepared by Detective Neumeyer at the time.

Some of this information is disputed. Apparently, Ms. Archuleta denied during a subsequent deposition that she had implicated Ms. Woods as a coconspirator, which would create an issue of fact as to that issue.

However, there also appears to be some substantiating testimony that she had initially told the police that plaintiff was involved in the theft. I think the law is pretty clear on this as far as the two officers' liabilities are concerned.

First perhaps I should indicate the summary judgment standard since there seems to be some misunderstanding as to that standard. I will incorporate by reference the comments I made in colloquy to Mr. Egbune and further indicate that under Rule 56 summary judgment is appropriate where there's no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. That's Rule 56 (c).

In analyzing whether summary judgments are appropriate, as this Court has stated earlier in other opinions, it's this Court's opinion that the Court must view the evidence in the light most favorable to the nonmoving party. Deepwater Investments versus Jackson Ski Corporation, 938 F.2d 1105, Tenth Circuit (1991).

However, the moving party has the initial burden of demonstrating the absence of genuine issues of fact as supporting the nonmoving party's case. That's Celotex versus Catrett, 477 U.S. 317, 1986; Bacchus Industries versus Arvin Industries, 939 F.2d 887.

Once the moving party meets this burden, the burden then shifts to the nonmoving party to show that there is a genuine issue of fact. That's Bacchus, 939 F.2d at 891.

To discharge this burden, the nonmoving party must go

beyond the pleadings and by her own affidavits, depositions, answers to interrogations, and admissions designate some specific facts showing a genuine issue of fact, quoting Celotex, 477 U.S. 324, Federal Rule 56(e).

If a nonmoving party fails to make this showing with respect to any element essential to the case on which it bears the burden of proof, then the moving party is entitled to summary judgment since complete failure of proof concerning an essential element renders the facts immaterial.

I think the trilogy of cases here involve Justice Powell's opinion in Matsushita, citations omitted -- it's Matsushita versus Zenith -- Justice White's opinion in Anderson versus Liberty Lobby, citations omitted; and Chief Justice Rehnquist's opinion in Celotex versus Catrett, citations omitted, and makes this clear.

The standard enunciated for summary judgment by Justice White, especially in his opinion, mirrors the standard for judgment as a matter of law in Rule 50(a) which dictates a trial judge must enter a judgment as a matter of law if under governing law there can be but one reasonable conclusion as to a verdict. Quoting Anderson versus Liberty Lobby, supra, and Brady versus Southern Railroad, 320 U.S. 476. That's long been the law, as far as I know.

In this case, as to the officers, the case is very clear. In order to proceed against these officers, it's incumbent to show liability that they arrested the plaintiff without probable cause to believe the plaintiff was guilty of some violation. Whether the plaintiff was eventually convicted as charged has really no bearing on whether the officer had probable cause to make the arrest. That's Hubbert versus City of Moore, Oklahoma, 923 F.2d 769.

The standard controlling the probable cause determination as far as the 1983 standard is concerned is whether the evidence is sufficient to induce a person of

ordinary prudence and caution reasonably to believe -- and that person would be a reasonable officer -- to believe that the defendant committed the crime as charged.

This does not require a showing of all the specific elements of the crime. There's been an argument made here that the officers had no information with respect to specific intent or the knowing elements of the criminal act. This is immaterial.

Probable cause must be evaluated in light of the scene. 20-20 hindsight or second-guessing, additional investigation that could have been done, is insufficient to state an action.

Probable cause determinations are made under the totality of the circumstances as they appeared to the officer at the time in question. And the officer making such a determination may consider any information within his knowledge, including information relayed to him by fellow officers or identified citizens who were witnesses. People versus Germany -- and that's the case -- I believe it was quoted earlier -- 41 Colo. App. 304.

The Court would agree with defendants' position that based on the information provided to Officer DeBow and Detective Neumeyer from the Wal-Mart store security employee, Mr. Trebilcock, Assistant Store Manager Simmons, and from a review of the videotape of the incident and other investigation that was made on the scene -- and apparently there was also a target receipt which was removed from the purse of Ms. Archuleta, as well as purported admissions by Ms. Archuleta and others, objective facts and circumstances led the defendants to believe that Ms. Woods was indeed involved in the crime of theft and conspiracy to commit theft with Pamela Archuleta.

I don't believe there are any facts in dispute with respect to these issues, although there may be a dispute as to what Ms. Archuleta said to Detective Neumeyer. I don't believe

that's particularly sufficient to defeat Detective Neumeyer's contention that he had appropriate cause to proceed as he did.

I'll find as a matter of law that there were sufficient facts and circumstances within the officers' knowledge of which they had reasonably trustworthy information sufficient to lead a reasonable officer to believe that the arrestee had committed or was committing an offense. That's Jones versus City and County of Denver, 854 F.2d 1206, Tenth Circuit (1988).

Summary judgment will enter on these claims. So long as the charges were based on probable cause, it is inappropriate for the Court to assess and would be error for any jury to assess any liability under 1983. Those claims are dismissed.

As to the issue of qualified immunity, I think under Harlow versus Fitzgerald -- I won't make a long dissertation of all the line of cases on qualified immunity, suffice it to say that qualified immunity is a question of law to be determined by the trial court. And based on the facts and circumstances here, there's no dispute that the plaintiff has failed to overcome a qualified immunity defense.

Plaintiff must demonstrate that there was some prior established law that clearly prohibited the defendants' actions which were a violation of the plaintiff's constitutional right. This must be sufficiently clear under the law that it would be reasonably understood by the officer at the time of the violation. And there's been no showing that the defendants' conduct violated the law in the first instance.

And since I've already made a determination that there was probable cause to arrest the plaintiff and charge her with the offenses of theft and conspiracy to commit theft, I believe the issue of qualified immunity becomes clear. Accordingly, the summary judgment will be granted on the issue of qualified immunity as well.

I fail to see the 1981 allegations of relevance to the

police officers. I don't believe there is a scintilla of evidence here with respect to the officers that there was any racial animus involved in this arrest. Mr. Egbune attempts on behalf of the plaintiff to make what the Court has termed in colloquy a quantum leap between the fact that it has later come out potentially that there were some white employees who were involved tangentially in some other aspect of this. He does not have any indication, nor has he given any indication whatsoever, that these officers were aware of that at any time surrounding this incident.

There's absolutely no racial animus in anywise proved in this matter as to the officers, Neumeyer and DeBow, or for that matter as to the city. So I'll order summary judgment on the 1981 claim.

I also believe there's no sufficient showing in any manner, in a fair assessment of all the evidence that's going to be available in this case, even taking all the plaintiff's contentions in their best light, to lead to any indication that there was any attempt to interfere with the plaintiff's's rights based upon the fact of her race.

And there's certainly no issue here as to the officers of the city with respect to right to enforce employment contracts or the like. So summary judgment will enter on the 1981 claim as well in favor of all defendants, city and the two officers, on that claim.

As to the claim against the city, first addressing the state tort claims, nobody really got to that. I think C.R.S. 24-10-101 make it very clear that plaintiff's tort claims fail to support a claim against the City of Aurora as such.

I believe the public entity is immune from liability for claims which lie in tort save the exceptions, none of which apply here under 24-10-106. However, I'll pass on that issue. I don't believe that issue would allow the plaintiff to recover under the tort claims, but those claims, in the absence of federal

jurisdiction, do not support the continuing jurisdiction in this case at any rate by this Court.

With regard to the 1983 claim, I think this is a fairly simple determination. Notwithstanding the allegation that the city has conceded this claim, I think the City of Canton case -- I won't go through all the long history of City of Canton. Suffice it to say that it all started with Monell, as pointed out and discussed with Mr. Egbune -- Monell versus city of New York, City Department of Social Services, 436- U.S. 658.

In that case, I believe the Supreme Court concluded that municipal liability under 1983 is limited to a showing of a deprivation of a federally protected right caused by the actions taken pursuant to official municipal policies of some nature.

Pembaur analyzes this further, indicating that Congress's intent is not that municipalities be held liable unless the action is pursuant to an official municipal policy of some nature and causes a constitutional tort, quoting Pembaur at 475 U.S. 478.

I believe proceeding on through that analysis that the plaintiff may be able, under Praprotnik, 108 S.Ct. 926, to prove the existence of some widespread practice, although not authorized by law or express policy, is so permanent and well settled as to constitute custom or usage. However, there's no showing here.

Although that may be where Mr. Egbune is going with this case for the plaintiff, I don't see a showing here that has been either alleged nor that there's any indication that there was some specific policy, which brings us to the case that really is controlling here, and that's City of Canton versus Harris.

I'll not analyze this in any extensive detail, suffice to say that the test under City of Canton is stated at page 1203 of the opinion at 109 S.Ct. 1197 where the court holds, our first inquiry in any case alleging municipal liability is the question of whether there is a direct casual link between municipal

liability, policy, or custom in the alleged constitutional deprivation. Inquiry is difficult, and it goes on to discuss that.

Without more, the city is not automatically liable if one of its employees happens to apply a policy in an unconstitutional manner. Liability would rest upon *respondeat superior*. I think that one statement at 1203 of the opinion answers the allegation that the city is liable because they conceded that the officers were operating under the policy.

If they operated unconstitutionally under the policy as alleged by the plaintiff, even assuming that, I think the court in City of Canton has made it clear that that, without anything further, simply constitutes a liability resting upon *respondeat superior*, and under Monell that's not appropriate.

The test is set forth at page 1204 of the opinion where the court states that the claim in the case is where a valid policy is unconstitutionally applied by an employee, the city is liable if the employee has not been adequately trained or the constitutional wrong has been caused by a failure to train or I would assume in the case of a failure to have a policy, which is constitutional. But that's only the first step.

The court in Monell went on to say that they must also show -- first the plaintiff must come forward and show the nature of the policy and the fact that it is in fact a policy or that it is a custom and usage so permanent and continuing in its nature that it can be applied as in Praprotnik.

And even then, they must go a step further and show that the municipality's failure to train its employees or failure of its policy is, in some relevant respect, evidence of deliberate indifference on the part of the cities to the rights of its inhabitants, and only then can the shortcoming be properly thought to be appropriately actionable under 1983.

Deliberate or conscious choice by a municipality to implement policies can provide liability for the city under 1983. There is absolutely no scintilla of evidence here

presented or even alluded to which would satisfy the City of Canton requirements in this case. And accordingly, summary judgment is granted on all the claims against the city for federal claims.

As I indicated, I believe the state tort claims are barred by governmental immunity. Notwithstanding that, the Court would not continue to exercise jurisdiction over the city based solely upon those state tort claims. So without further discussion, all the claims against the city are likewise dismissed.

I think that disposes, does it not, of all the claims against the city and the officers?

Summary judgment will be granted as indicated.

APPENDIX-3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

vs.

WAL-MART, a Corporation; S.A. NEUMEYER, SHAWN DEBOW, individually and as members of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a Municipal corporation in the State of Colorado; joint and several liability,

Defendants.

AFFIDAVIT OF PLAINTIFF,
CYNTHIA FAYE WOODS

COMES NOW, the Plaintiff, Cynthia Faye Woods, under oath and penalty of perjury, states in regards to my arrest on December 5, 1991 and subsequent report, accusation, appearance as witnesses in my prosecution by the Defendants or their agents, and my prosecution in Arapahoe District Court, State of Colorado, Case No. 92-CR-253 and any and all publication by the Defendants that suggest that I am a thief or conspired to steal any item or merchandise from Wal-Mart,

states as follows:

1. That I am not a thief.

2. That I did not steal any item of merchandise, at any time, from my employer, Wal-Mart.

3. That I did not conspire with Pamela Archuleta at any time to steal any item of merchandise from Wal-Mart.

4. That if Pamela Archuleta, as subsequent information indicated, stole items of merchandise from Wal-Mart, she acted alone and without any assistance from me whatever.

5. That I was wrongfully accused of stealing and conspiracy to steal by the Defendants.

6. That on December 5, 1991, when the incident of Pamela Archuleta's stealing occurred, I was the only black person on duty with all white/Caucasian employees of Wal-Mart.

7. That a white/Caucasian cashier employee of Wal-Mart, at the electronics department made a similar mistake I made by not catching the deception of Pamela Archuleta, but was not arrested, accused and prosecuted for stealing or conspiracy to steal any merchandise with Pamela Archuleta.

8. That a group of white/Caucasian employees at the exit door of the Wal-Mart store located at 14000 E. Exposition, Aurora, Colorado, failed to detect Pamela Archuleta's deception, but were not arrested, accused and prosecuted for stealing or conspiring with Pamela Archuleta to

steal items of merchandise.

9. That I told the Defendants when I was arrested, and/or questioned, that I was innocent and in no way related or associated with Pamela Archuleta and didn't agree to steal items of merchandise with her or anybody.

10. That the only way I was arrested, accused and prosecuted for a crime I did not commit, viz: theft and conspiracy to commit theft; is the fact of my race, the fact that I am black.

11. No other person similarly situated as I was on December 5, 1991 was accused, arrested and prosecuted and they are white/Caucasian individuals.

12. I was discriminated against because of my race.

13. That I have been diagnosed as suffering from Post-Traumatic Stress Disorder and I am being treated by Dr. Cory Sapin.

Affiant sayeth not.

s/-/
Cynthia Faye Woods
Affiant

APPENDIX-4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a corporation; S.A. NEUMEYER, SHAWN DEBOW, individually and as members of the Aurora Police Department; CITY OF AURORA, a municipal corporation in the State of Colorado; joint and several liability,

Defendants.

AFFIDAVIT OF PLAINTIFF, CYNTHIA FAYE WOODS

COMES NOW, the Plaintiff, Cynthia Faye Woods, under oath and penalty of perjury, states in regards to my arrest on December 5, 1991 and subsequent report, accusation, appearance as witnesses in my prosecution by the Defendants or their agents, and my prosecution in Arapahoe District Court, State of Colorado, Case No.92-CR-253 and any and all publication by the Defendants that suggest that I am a thief or conspired to steal any item or merchandise from Wal-Mart, states as follows:

1. I was instructed to go to the training room at Wal-Mart's store, 14000 E. Exposition Avenue, Aurora, Colorado, after end of my "work shift" which is 3:00 p.m., on December 5, 1991, by my sister-in-law Keisha Martin, who was instructed to do so by Scott Trebilcock, Wal-Mart's employee. Keisha Martin was present at the store to transport me home.

2. When I got to the training room, I informed the managers of the store that my sister-in-law, Keisha Martin, had told me "what was going on."

3. At some point during my interrogation by Wal-Mart's employees, I needed to urinate and I asked to be allowed to go to the rest room to urinate, but was denied the opportunity. I stood up and requested to use the rest room, **but was pushed down to my seat and told that: "You are not going anywhere."** This occurred before the police arrived.

4. I was not released from custody until over two (2)hours on December 5,1991.

5. I did not appear before any **magistrate or judge** before I was released from custody on December 5, 1991.

6. I was asked by Wal-Mart managers to sign the **exit interview** which states that the reason for the termination of my employment was because I engaged in theft. I refused to do so **because I am not a thief.**

Affiant sayeth not.

s/-/
Cynthia Faye Woods
Affiant

APPENDIX-5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

vs.

WAL-MART, a Corporation; S.A. NEUMEYER, SHAWN DEBOW, individually and as members of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a Municipal corporation in the State of Colorado; joint and several liability,

Defendants.

AFFIDAVIT OF DR. CORY SAPIN, PERTAINING TO CAUSE OF INJURY SUFFERED BY PLAINTIFF, CYNTHIA FAYE WOODS

COMES NOW, Dr. Cory Sapin, a licensed clinical psychologist, under oath, states in regards to the treatment or services rendered to Cynthia Faye Woods as follows:

1. That I, Dr. Cory Sapin, have been treating Cynthia Faye Woods for Post-Traumatic Stress Disorder sustained as a result of being accused and treated as a criminal while innocently fulfilling her normal job functions as a cashier

at Wal-Mart, which condition is exacerbated by the fact that she was pregnant at the time.

2. That I, Dr. Cory Sapin, believe that it is a reasonable psychological probability that Cynthia Faye Woods' condition is due to the trauma sustained as a result of being accused of and treated as a criminal while innocently fulfilling her normal job functions as a cashier at Wal-Mart, in that she related to me that she had no previous symptoms on or before December 5, 1991, when she was accused of theft and conspiracy to steal.

3. That Cynthia Faye Woods has incurred financial costs as a result of her being treated by me and will reasonably incur financial costs in the future as a result of the Post Traumatic Stress Disorder associated with being accused of and treated as a criminal while innocently fulfilling her normal job functions as a cashier at Wal-Mart.

Affiant Sayeth not.

s/-/_____
Dr. Cory Sapin
Affiant

APPENDIX-6

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Civil Action 92-CV-1235

COMPLAINT

CYNTHIA FAYE WOODS,
Plaintiff,

vs.

WAL-MART, a Corporation; S. A. NEUMEYER, SHAWN DEBOW, individually and as members of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a Municipal corporation in the State of Colorado; joint and several liability.

NOW COMES the Plaintiff Cynthia Faye Woods, by and through her attorney, Patrick A. Egbune, Esq., and complaining against Defendants, Wal-Mart, S.A. Neumeyer, Shawn Debow, Aurora Police Department, and the City of Aurora, and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff is an individual and former employee of Defendant, Wal-Mart, with her address as 1270 Marion Street, #109, Denver, CO 80203.

2. Defendant, Wal-Mart is registered and authorized to do business in the State of Colorado and one of its business addresses is 14000 E. Exposition Ave., Aurora, CO 80012.

3. Defendant, S. A. Neumeyer, was at all times pertinent to the allegations of this complaint a detective employed by the City of Aurora, Police Department. He is sued individually and in his official capacity.

4. The actions of Defendant, S. A. Neumeyer, was pursuant to official City of Aurora Police Department Code of Conduct, policies, practices, customs and/or reckless disregard of the rights and feelings of Plaintiff. Defendant was acting under Color of official City of Aurora policies, customs and/or practices.

5. Defendant, Shawn Debow was at all times, pertinent to the allegations of this complaint, a Police Officer, employed by the City of Aurora, Police Department. He is sued individually and in his official capacity.

6. The actions of Defendant, Shawn Debow, was pursuant to official City of Aurora Police Department Code of Conduct, policies, practices, customs and/or reckless disregard of the rights and feelings of Plaintiff. Defendant was acting under Color of official City of Aurora policies, customs and/or practices.

s/-/
Patrick A. Egbune, Esq.

APPENDIX-7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 92-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a Corporation; S. A. NEUMEYER, SHAWN (sic)DeBOW, individually and as members of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the State of Colorado; joint and several liability,

Defendants.

ANSWER

Defendants, S.A. Neumeyer, Sean DeBow, and City of Aurora ("Defendants"), by and through their attorneys, Bruno, Bruno & Colin, P.C. by Marc F. Colin, and Charles H. Richardson and Christopher K. Daly, respond to the correspondingly numbered paragraphs of Plaintiff's Complaint, as follows:

JURISDICTION AND VENUE

1. Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations set forth in paragraphs 1 and 2 of Plaintiff's Complaint, and Defendant, therefore, deny them.

2. Defendants admit the allegations contained in paragraphs 3, 5, 9, 11, and 14 of Plaintiff's Complaint.

3. Defendants deny the allegations contained within paragraphs 10 and 12 of Plaintiff's Complaint.

4. With respect to the allegations contained in paragraph 4 of Plaintiff's Complaint, Defendants admit that Defendant S. A. Neumeyer acted pursuant to the policies, practices, and customs of the Aurora Police Department. However, Defendants deny that Defendant S. A. Neumeyer's actions were in reckless disregard of the rights and feelings of Plaintiff.

5. With respect to the allegations contained in paragraph 6 of Plaintiff's Complaint, Defendants admit the allegations that Defendant Sean DeBow was acting pursuant to the policies, practices, and customs of the City of Aurora Police Department. However, Defendants deny that Defendant DeBow's actions were in reckless disregard of the rights and feelings of Plaintiff.

6. With respect to the allegations contained in paragraph 7 of Plaintiff's Complaint, Defendants admit that the Aurora Police Department is a department of the City of Aurora and that the City of Aurora is a municipal corporation, which is a political subdivision of the State of Colorado. However, Plaintiff's reference to Defendants being residents of such City is admitted only with respect to the fact that the

Aurora Police Department is a department of the City of Aurora.

7. With respect to paragraph 8 of Plaintiff's Complaint, Defendants admit that the Aurora Police Department and its individually named officers in this case acted pursuant to official policies and practices. However, Defendants deny that the individually named officers in this litigation acted in reckless disregard for the rights and feelings of the Plaintiff.

s/-/
Bruno Bruno & Colin
Marc F. Colin

s/-/
Charles H. Richardson
Christopher K. Daly

Attorneys for Defendants Neumeyer and Debow

APPENDIX-8

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO
Case No.92CR253, Division 6

REPORTER'S TRANSCRIPT
TESTIMONY OF SCOTT TREBILCOCK, WAL-MART SECURITY PERSONNEL AND KEY PROSECUTION WITNESS

THE PEOPLE OF THE STATE OF COLORADO,

v.

CYNTHIA FAYE WOODS,

Defendant.

CROSS EXAMINATION: PATRICK A. EGBUNE, ESQ.

Q It's your testimony that at least two individuals, in fact, three including the people at the doorway, at the door, that should have checked Pamela to see if she paid -- everybody were unable to detect her?

A Apparently so.

Q You also brought to our attention the fact that cash exchanged hands between Pamela and another person who was a customer of the store?

A That's correct.

Q How far were you from where that cash exchange took place at the time?

A About five feet.

Q About five feet. Did you hear any conversation?

A During that transaction?

Q Yes.

A No, I did not. As a matter of fact, I didn't know about that change transaction until I reviewed the video.

Q So the video -- basically, you were there in person?

A Correct.

Q You could not see anything that was unusual until you reviewed the video?

A Except for watching Pamela Archuleta.

Q Except for watching Pamela Archuleta. So from all the suspicion -- even the cash transaction was not that suspicious until you reviewed the video?

A That's correct, because I was watching Pamela Archuleta.

Q Thank you. What else did you learn from the video?

A I -- other than that cash transaction and watching her doing her normal cashiering, that's it.

Q Without watching the video, could you have felt that there was something unusual going on between Cynthia Woods and Pamela Archuleta?

A Yes, I could.

Q What was that that was unusual?

A That Cynthia Woods took a whole group of clothes and placed them in a bag without ringing them up.

Q Didn't you suspect that Cynthia Wood (sic) could have again fooled -- I mean, that Pamela Archuleta could have fooled Cynthia like the lady at the electronics store was fooled?

A Not in my opinion.

Q Was the lady at the electronic store charged with

any crime?

A No, she was not.

Q Did you found out that the lady at the electronics store was a family member of Pamela Archuleta?

A No, I did not.

Q Did you found out that the lady at the electronics store was a friend of Pamela Archuleta?

A No, I did not.

Q But you agree that she was, in fact, fooled?

A I assume so because she let her out.

s/-s
Marilyn M. Diggs

APPENDIX-9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 92-S-965

DEPOSITION OF PAMELA ARCHULETA
June 1, 1993

CYNTHIA FAYE WOODS,

Plaintiff,

vs.

WAL-MART, a Corporation; S. A. NEUMEYER, SHAWN (sic) DeBOW, individually and as members of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the State of Colorado; joint and several liability,

Defendants.

APPEARANCES:

Patrick A. Egbune, Esq.
1315 S. Galena Street, Suite B-101
Denver, Colorado 80231
Appearing on behalf of Plaintiff.

Bruno, Bruno & Colin, P.C.
By Marc F. Colin, Esq.
1560 Broadway, Suite 1099
Denver, Colorado, Suite 1099
Appearing on behalf of
Defendants S. A. Neumeyer and
Shawn (sic) DeBow in their
individual capacity as members
of the Aurora Police
Department.

Theresa Kinney, Esq.
City Attorney's Office
1470 S. Havana Street
Aurora, Colorado 80012
Appearing on behalf of
Defendants S. A. Neumeyer and
Shawn (sic) DeBow, in their
Official capacity as members of
the Aurora Police Department
and the City of Aurora.

Also Present: Sandra Major

A Yes, I did talk to Detective Neumeyer.

Q All right. And when you spoke to Detective Neumeyer, were you under the influence of drugs?

A Yes. I was high, yes.

Q Detective Neumeyer wrote a report about your conversation with him, and in his report he says that you had been under the influence -- you told him that you had been

under the influence of cocaine for the past three years, meaning that I'm reading this as you -- that you had been taking cocaine in one form or another for the three years before you got arrested.

A Yes.

Q And that is a fair statement?

A Yes, it is.

Q He then says that she further advised initially that she did not use a co-conspirator in the crime.

A That's true.

Q Okay. He then says that he told you he didn't believe you, and this -- he wanted to know what involvement Cynthia Woods had in the case.

And at this time -- and I'm going to read this directly, okay? -- "She advised that she did not really make any prior arrangements other than going into the Wal-Mart store because Cynthia Woods is a known friend of hers. She went through and pushed the cart through the checkout line, at which time they made an agreement where the defendant" -- that's you -- "Archuleta would give Cynthia Woods a fourth of the money that she intended to get for the TV set when she returned it for a cash refund. She advised she would receive the majority of the money because she had to do all of the work and that Cynthia Woods was just allowing her to leave the store without making the purchase."

Why did you say that?

A I did not say that. That's not true at all. That is not true.

Q So it's your testimony that you didn't tell Detective Neumeyer any of this?

A No, I didn't. And I told Gina, because Gina told me that same thing that he had said. I told her, "I'll take a polygraph test, whatever I have to, I will do that, because that

is not true. That's a lie."

Q Just so I'm clear, you're not saying - how can I state this so it makes sense? You're saying that you never said this, that what he reports here is not true?

A What he reported right there is not true. I did not say that out of my mouth, because that's a lie. I mean, if I was going to say that, I'd stick to that story, you know, which I'm saying that's not true at all, and I never said that to him.

Q And it's your testimony that you reported that fact to-- is it Shimeall, or . . .

A Gina Shimeall. Yes, I told Gina Shimeall, I told her, "That's not true" and she told me, she said, "Pam," she says, "Well, he is going to try to get you for perjury." I said, "I'll take a polygraph test. I will tell the whole truth, and that is not true."

I don't know why, him being an officer of the law, would make that story up. I never said that, and I'll put that on my life. I never said that.

Q Now, what I understood from your attorney previously was that you had said this but that you had been forced or coerced to say that by the police.

A No, I never said that, and the only thing that Detective Neumeyer did say to me, he told me he would help me get out of there. He says -- he told me -- yes, he did tell me, "I don't believe you."

He says, "I believe you had something to do with it, and the only way you're going to get help -- is if you did tell that you did have something to do with it."

And he even told me to take care of myself.

STATE OF COLORADO)
) ss. REPORTER'S
COUNTY OF DENVER) CERTIFICATE

APPENDIX-10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a Corporation; S. A. NEUMEYER, SHAWN DEBOW, individually and as a member of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the State of Colorado; joint and several liability,

Defendants.

RESPONSES OF DEFENDANT SEAN DEBOW
TO PLAINTIFF'S COMBINED INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
AND THINGS

INTERROGATORY NO.3

3. Please describe fully each and every source of knowledge about the alleged conspiracy to commit theft and theft charges against Cynthia Faye Woods at the Arapahoe District Court, Englewood, Colorado, Case No. 92-CR-253, of which you are aware, including:

(a) the identification of each such source,

(b) the date and time you received any information from each such source regarding the alleged occurrence,

(c) the substance of all such information you received from each such source,

(d) the manner in which such information was received.

RESPONSE TO INTERROGATORY NO. 3

3. (1.a) Detective John Hughes, Aurora Police Department.

(1.b) 12/5/91 at approximate 2:32 p.m.

(1.c) Identification of suspects; identification of other sources of information regarding incident (i.e., Trebilcock).

(1.d) Verbally.

Approximately 15 to 20 minutes after our initial contact, Detective Hughes provided the driver's licenses/I.D. cards of suspects and items of contraband taken from Pamela Archuleta.

3. (2.a) Scott Trebilcock, Wal-Mart security employee.

3. (5.a) Cynthia Woods, former Wal-Mart employee.

(5.b) 12/5/91 at approximately 4:05 p.m.

(5.c) I advised Ms. Woods that she was under arrest for felony theft. Ms. Woods responded that she didn't know Ms. Archuleta and didn't know what Ms. Archuleta was doing. She further said that she, "should have been more careful" when checking Ms. Archuleta through the checkout area and that Ms. Archuleta had told her that it was an "even

exchange for the T.V. and other clothing." Ms. Woods also provided personal information that appears on the Aurora Police Department custody report, reference Cynthia Faye Woods, Case No. 91-59513. She advised that her married name was Cynthia Martin.

(5.d) Verbal.

3. (6.a) Pamela Archuleta.

(6.b) 12/5/91, approximately between 4:15 and 4:30 p.m.

(6.c) She advised that she had a receipt for the television (a Target receipt for an Emerson television). She denied that she knew Cynthia Woods and advised that she didn't think it was right for Ms. Woods to get into trouble for something that she (Ms. Archuleta) had done. Ms. Archuleta also provided information necessary for Aurora Police Department custody report, reference Ms. Archuleta (Case No. 91-59513).

(6.d) Verbal.

CITY ATTORNEY'S OFFICE

s/-s
Charles H. Richardson
Teresa Kinney

APPENDIX-11

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

Case No. 92CR253, Division 6

REPORTER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO,

V.

CYNTHIA FAYE WOODS,

Defendant.

The trial in this matter commenced on September 15, 1992, and continued through September 16, 1992, before the HONORABLE JAMES F. MACRUM, JR., Judge of the District Court.

This transcript contains the proceedings held on September 16, 1992.

APPEARANCES

FOR THE PEOPLE: JOHN FRANKS
Deputy District Attorney
Reg. No. 16518

FOR THE DEFENDANT: PATRICK A. EGBUNE
Attorney at Law
Reg. No. 20397

KEISHA CHANTILL MARTIN,

called as a witness by the Defendant, being first duly sworn, was examined and testified as follows:

THE COURT: Please have a seat in the witness chair.

DIRECT EXAMINATION

BY MR. EGBUNE:

Q Good morning.

A Morning.

Q Would you please state your full name and spell your last name for the record?

A Keisha Shantill Martin, M-a-r-t-i-n.

Q Would you state your date of birth?

A 7-10-74.

Q Would you also state your address, your correct address?

A 1251 South Wheeling Way.

Q Do you know the Defendant in this case?

A Yes, I do.

Q Would you state the name of the Defendant?

A Cynthia Woods.

Q Do you have any relationship with Cynthia Woods?

A Yes.

Q What is your relationship with Cynthia Woods?

A She's my sister-in-law.

Q Let me take you back to December 5, 1991. Did you know where Cynthia Woods worked on December 5, 1991?

A Yes, I did.

Q Where did Cynthia Woods work?

A At Wal-Mart.

Q Okay. Did you have an opportunity to visit Wal-Mart on December 5, 1991?

A Yes, I did.

Q Do you recall the time that you made the visit, time of the day?

A Approximately maybe about 4:30-5 o'clock, as far as I remember, somewhere in there.

Q Why were you at the store?

A I was coming to pick her up from work.

Q So you were there because Miss Cynthia Wood (sic) was closing from her work?

A Right.

Q While you were there, what did you observe?

A After I parked the car, I was walking up to the store and I seen that they were arresting or checking out a lady that was pushing a buggy out of the store with a box or something that was in the basket. I didn't take the time to look and see what it was, but they were checking on her boxes and everything.

As I was walking in the store, I went to go find Cynthia, and when I was in there, one of the gentlemen that is, I guess, a manager or whatever came up to me and said, Cynthia, I need to see you in the training room. And I said, I'm not Cynthia. He says, you're not? I said, no. I said, I'm related to her; I'm her sister-in-law, but I'm not Cynthia. He told me

if I seen her to tell her they need to see her back in the training room.

Q When did you see Cynthia after that conversation with the manager?

A About a minute after.

Q And what did you tell Cynthia?

A I said -- when I seen her, I heard her name paged over the intercom, and I said, Cynthia, did you hear your page over the intercom. She says no. She says, I wonder what for. She said, hold on, I'll meet you outside the doors after I see what they want. After then I never seen her again.

Q Did you tell Cynthia anything concerning whatever --

MR. FRANKS: Objection, leading.

A (The Witness) No.

MR. FRANKS: Withdrawn.

Q (By Mr. Egbune) Did you appear at the back room where Cynthia was being interrogated?

A No, I wasn't.

Q Did you take Cynthia home?

A No.

Q How did you get home?

A I drove.

Q Did you know what happened to Cynthia?

A I waited around the store and I asked the gentleman that I talked to earlier could they tell me where Cynthia Woods was. They said, she'll be out in a minute. I waited for like three hours and I never seen her.

And then finally I talked to the gentleman that I talked to in the beginning and he said, I'm sorry, Cynthia Woods has been arrested. And I said, can you tell me what for, and he says no.

So as I was walking out the store, I asked

another lady, could you tell me what happened to Cynthia Woods. She said she had been arrested. I said, can you tell me what for. She said, shoplifting.

Q Do you know who the individual -- did they tell you that Cynthia picked up some items from the store?

A Excuse me?

Q Did they tell you that Cynthia picked up some items from the store?

A No.

Q Did they tell you why Cynthia was being charged with shoplifting?

A No.

Q Did you know if Cynthia was being accused with somebody else?

A I don't know.

Q You didn't know anything?

A No. All I know is they told me that she was being arrested for shoplifting.

Q Have you been coming to Court with Cynthia since she's been going through this case?

A Yes.

Q Did you have any opportunity to find out whether she was being accused with somebody --

MR. FRANKS: Objection, relevance.

THE COURT: This is just a foundation question.

MR. FRANKS: All right.

Q (By Mr. Egbune) Did you have any opportunity to find out if she was being accused with anyone else?

A Yes.

Q Did you have -- have you ever had any opportunity to determine who that person was?

A Yes.

Q Have you ever seen that person before?

A Yesterday and at the time of the arrest, that day.

Q Okay. Do you know this person's name?

A Yes, I do.

Q What is her name?

A Pamela Archuleta.

Q Okay. Have you ever seen Cynthia Woods with this person before?

A Never in my life.

Q Okay. Are you related in any way to Pamela Archuleta?

A No, I'm not.

Q Do you know if Cynthia is related to Pamela Archuleta?

A No, she isn't.

Q Did you ever talk to Pamela Archuleta?

A Yesterday. She came up to me and she was telling us that --

THE COURT: Excuse me, I think we've got a stipulation dealing with this. If you want to open that up again, then I will be forced to give immunity. That's an option I have. Or strike it. The stipulation is the stipulation. Any statement that Pamela said I'm not going to hear. You're not going to run an end run around this issue again. So I'm not going to hear it. I'll interpose my own objection.

MR. EGBUNE: Okay.

THE COURT: All right.

MR. EGBUNE: No further questions.

APPENDIX-12

POLICE DEPARTMENT REPORT

Initial Offense Classification: Shoplifting 2303

Date of Original Report: 12/5/91

I advised Woods and Archuleta who were in the same room they were under arrest for Felony theft. Woods became very upset, saying she had no idea what A1-Archuleta was doing, and that she did not even know Archuleta. Woods was trying to leave through another door so I handcuffed her immediately, then handcuffed Archuleta. Woods kept carrying on about how she knows she should have been more careful when Archuleta went through her check out stand, but that Archuleta told her it was an even exchange for the television and other clothing, even though the tape shows that there was no receipt shown to Woods by Archuleta.

Woods further maintained that she did not know Archuleta, that this was the first time she ever layed eyes on her. Earlier when A' had been arrested by security and the assistant manager had A.. Woods come back to the training room A2-Woods had exclaimed to the Ast. Mgr. Harvey Simmons that "I know what's going on. That's my sister-in-law, and I know whats going on." Though both ladies denied that they knew each other when I spoke to them A1-Archuleta's maiden name is Martin, and Woods married name is Martin, as well. Martin does not go by her husband's last name,but maintains her maiden name, of Woods.

While taking A1-Archuleta's property Det. Hughes found a cigarette pack with two foil pipes and a glass pipe inside. These

items had burned residue on them, possibly crack cocaine. These items were seized and later placed into evidence at Police Hqs. by this officer.

A1 also had a small "pick" like weapon in her property the shank of which only protruded 1 1/2" from the handle. This too was placed into evidence.

A1-Archuleta claimed to have a receipt for the television, which she said she was exchanging. In her property she had a receipt from Target for an Emerson TV for which she paid $379.00 plus tax. This receipt was very tattered and torn and had no date on it. Per Rp-Trebilcock his stores policy would not permit them to take an item back on a Target receipt. A1 did not have a Wal-Mart receipt for the T.V. nor the clothes she took. A1-Archuleta had several other receipts from Target but the only receipt she had from Wal-Mart was for the purchase of the two items she paid for today during the theft, the total on that receipt was only $16.53.

Officer Ziegler responded to my location to transport A2-Woods to Hgs. I transported A1-Archuleta and the evidence to Hgs. I had advised A1-Archuleta of her rights per Miranda verbally after I handcuffed her. She stated that she did take the merchandise but that A2 had nothing to do with it, that this was the first time she met A2 and she did not think it was right that A2 got in trouble for something that she (A1) did. Archuleta denied that she was A2-Woods sister-in-law. A1 also stated that she was having problems since she got back on drugs.

When I asked A1 for her address she advised that she still lived at 3645 Niagara St. but per Det. Hughes, Denver advised that A1 no longer lives there. It is A1's mother's house. Det. Hughes also spoke with Andrea Martin, sister of A1-Archuleta

who was outside to pick up the car. Andrea likewise told Hughes that A1 did not live on Niagara St. any more. She did not however provide a new address for A1. Per Hughes, Denver had been trying to pick A1 up on the warrant at the Niagara address, but was informed she no longer lives there.

I notified Sgt. Weaver watch commander. A1 was jailed on the warrant from Denver as well as the theft charge with bonds on $5,000.00 each. A1 was also charged with possession of the paraphernalia which was noted above.

A2-Woods had no prior criminal record, and is 3 (three) months pregnant at this time. She was processed and released pending charges. See copies of the store reports by Rp-Trebilcock and W3-Simmons.

Receipts showing the value of the items stolen received from Rp, and placed into evidence as well.

When Det. Hughes released A1's vehicle to her sister, he recovered a bag of clothing which had no receipts for the items, these were placed into property too.

s/-/
S. DeBow

APPENDIX-13

DISTRICT COURT, COUNTY OF ARAPAHOE,
STATE OF COLORADO
Case No. 92-CR-253, Division 6

STIPULATION OF PARTIES

THE PEOPLE OF THE STATE OF COLORADO,

v.

CYNTHIA FAYE WOODS,
Defendant.

---

1) On 12-6-91, Pamela Archuleta told Det. Neumeyer that Cynthia Woods was not a co-conspirator.

2) Archuleta's testimony, if she were to testify in this case, would be to deny admitting conspiracy and friendship or relationship with Cynthia Woods.

3) That Pamela Archuleta would testify that in July, 1992. she stated in the Justice Center hallways outside Division 1 that Cynthia Woods was not a co-conspirator.

4) That she would testify to denying a conspiracy with Cynthia Woods in a conversation with D.A. Investigator Tom McNevin as referred to in pp. 40 of discovery.

5) That by stipulation any request by either party to call Pamela Archuleta to the stand is withdrawn and appellate argument regarding the stipulation not to call Archuleta isuaned.

s/-/
Patrick A. Egbune, Esq.

s/-/
John Franks, Esq.
Deputy District
Attorney 16518

9/15/92

APPENDIX-14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a corporation; STEVEN ANTHONY NEUMEYER, individually and as a member of the AURORA POLICE DEPARTMENT; SEAN THOMAS DEBOW, individually and as a member of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the state of Colorado; joint and several liability,

Defendants.

REPORTER'S TRANSCRIPT OF SUMMARY
JUDGMENT
MOTIONS HEARING
APRIL 1, 1994

Before the HONORABLE DANIEL B.SPARR, U.S. District Court Judge, in Courtroom C-501, United States Courthouse, Denver, Colorado, commencing on April 1, 1994, at 2:36 p.m.

. . . judgment on that claim for the defendants.

Is that your contention?

Mr. Boog: Your Honor, we thought that we had a grounds for dismissal of the 1981 claim, and then we realized that Patterson had been --

The Court: Patterson is no longer the law.

Mr. Boog: And I think our other position on that was that at the very least, there are disputed issues of fact on that question.

The Court: So you're not asking -- that's what I wanted to clarify. You're not asking for summary judgement on that claim?

Mr. Boog: No, we're not.

The Court: All right. Plaintiff asks for summary juidgment on that claim. Your response is, there's a disputed issue of fact and that claim is viable.

APPENDIX-15

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a corporation; STEVEN ANTHONY NEUMEYER, individually and as a member of the AURORA POLICE DEPARTMENT; SEAN THOMAS DEBOW, individually and as a member of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the state of Colorado; joint and several liability,

Defendants.

REPORTER'S TRANSCRIPT OF SUMMARY
JUDGMENT
MOTIONS HEARING
APRIL 1, 1994

...was an unreasonable thing to do? I don't.

Mr. Egbune: I think that reasonable people can differ, Your Honor, and that is why we have jury trials. I do not have --

The Court: Are you saying you have a right to go to a jury merely because an issue exists here?

Mr. Egbune: I have a right to try a case where there is disputed issue of fact.

The Court: Well, number one, that is --

Mr. Egbune: I believe that that is the law.

The Court: Number one, that is also wrong. You do not have a right to try a case where there is a disputed issue of fact. I believe just no less than three of our Supreme Court Justices --namely, Justice White, Justice Rehnquist -- and I'm not at all sure I remember who the third justice was. I believe it was Justice Stevens -- in a trilogy of cases, which I'm assuming you've read -- it was Justice Powell. Justice Powell in Matsushita Electronic Industrial Company versus Zenith; Justice White in Anderson versus Liberty Lobby; and Justice Rehnquist in Celotex versus Catrett have all held quite contrary to that, that that is not the standard, that you cannot simply rely on an allegation of a disputed issue of fact.

APPENDIX-16

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a corporation; STEVEN ANTHONY NEUMEYER, individually and as a member of the AURORA POLICE DEPARTMENT; SEAN THOMAS DEBOW, individually and as a member of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the state of Colorado; joint and several liability,

Defendants.

REPORTER'S TRANSCRIPT OF SUMMARY
JUDGMENT
MOTIONS HEARING
APRIL 1, 1994

...is that if I prove the case against Sean DeBow and Neumeyer, then under their admission, the admission of the city, of course, the city may become liable.

The Court: It sounds to me like you're saying that that's *respondeat superior*.

Mr. Egbune: That's not what I said, Your Honor.

The Court: Well, that's certainly not the law under Monell.

Mr. Egbune: That's not what I said, Your Honor. I know Monell very well.

The Court: You're saying if they're proceeding -- if they're proceeding pursuant to city policies and you prove they're liable, that you automatically get judgment against the city?

Mr. Egbune: That's not exactly what I'm stating, Your Honor. Maybe I should rephrase it. What I'm stating is that that procedure of conducting police business as had done by the two individual police officers would amount to a conduct that is subject to Monell findings of city liability.

The Court: What do you mean, subject to Monell?

Mr. Egbune: If --

The Court: What findings do you want under Monell?

Mr. Egbune: Well, if the city --

The Court: Monell doesn't have anything to do with city liability except it says municipalities cannot be held liable.

Mr. Egbune: Not, that Your Honor.

The Court: Okay. Well, what does Monell have to do with it?

Mr. Egbune: Monell says that the city is liable when its policies and conduct affect individual right and that the city becomes a person when sued under 1983 -- Section 1983. And so I'm suggesting to the Court --

The Court: Where does it may that in Monell?

Mr. Egbune: Pardon me, Your Honor?

The Court: Give me a quote. Where does it say that in Monell?

Mr. Egbune: That's the ruling of Monell, Your Honor. I took it in law school. It was one of my class cases.

The Court: Well, I'm not sure I agree with that. Due deference to your professor in law school, I'm not sure --

Mr. Egbune: It's not my professor, Your Honor. It is the Supreme Court of the United States.

The Court: Oh ,no. You said you took it in law school.

Mr. Egbune: I read it in law school.

The Court: If your professor in law school told you that's what Monell held, I'm not sure I agree.

APPENDIX 17

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Case No. 92-S-965

CYNTHIA FAYE WOODS,

Plaintiff,

v.

WAL-MART, a corporation; STEVEN ANTHONY NEUMEYER, individually and as a member of the AURORA POLICE DEPARTMENT; SEAN THOMAS DEBOW, individually and as a member of the AURORA POLICE DEPARTMENT; CITY OF AURORA, a municipal corporation in the state of Colorado; joint and several liability,

Defendants.

REPORTER'S TRANSCRIPT OF SUMMARY JUDGMENT
MOTIONS HEARING
APRIL 1, 1994

The Court: Anything else from the city?

Ms. Kinney: Just very briefly, Your Honor. I would like to address one point Mr. Egbune brought up regarding the city's admissions in this case. The city did admit that at all times both Officer DeBow and Detective Neumeyer were acting pursuant to the policies and rules of the City of

Aurora. That, however, is another quantum leap to jump from that admission to the admission that the city has a constitutionally deficient policy. And I would simply reiterate again that he simply has failed to even state a claim, and summary judgment is appropriate as to the city. Thank you.

APPENDIX-18

EXIT INTERVIEW

Name: Cynthia Woods
Store# or Location: 1492
Date of Hire: 10/5/91
Date of Termination: 12/5/91
SS #: 455-19-4294
Supervisor's Name: Randy Edwards
Performance Rating: Satisfactory
Rehire: No
Reason for Termination: Involuntary Termination: Other (Explain) Theft

s/_____/
Jane Bullock